SUPREME COURT OF THE UNITED STATES.

No. ~~56~~ 19.

THOMAS D. OWINGS AND AL., PLAINTIFFS IN ERROR,

VERSUS

ANDREW KINCANNON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE KENTUCKY DISTRICT.

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To Andrew Kincannon.

Whereas an appeal has been prayed by Lewis W. R. Phillips, sole heir of Ralph Phillips, deceased, and Sally Head, widow, and Nancy Head, the only child of John L. Head, deceased, and is hereby granted to the Supreme Court of the United States, to reverse a decree of the seventh circuit court of the United States in and for the Kentucky district, at the November term, one thousand eight hundred and twenty-five, wherein the said Andrew Kincannon is complainant, and Thomas D. Owings, &c., with ancestors of said L. W. R. Phillips and S. and N. Head were defendants.

These therefore are to cite and command you that you be and appear in the Supreme Court of the United States at the city of Washington, on the second Monday in January next, and then and there to be heard, if any thing you have to say upon the said appeal.

Witness my hand, as an associate justice of the Supreme Court of the United States, and presiding Judge of the seventh circuit court of the United States of America in and for the Kentucky district, this 18th day of May, 1830.

JOHN McLEAN,
Justice Supreme Court U. States.

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Pleas before the Honorable Robert Tremble, one of the Judges of the seventh circuit court of the United States of America in and for the district of Kentucky, held at the capitol, in the town of Frankfort, at the November term of said court, in the year one thousand eight hundred and twenty-five.

Be it remembered, that heretofore, to wit, on the 29th day of December, in the year of our Lord one thousand eight hundred and fifteen, came Andrew Kincannon, by his counsel, into the clerk's office of the court aforesaid, and filed the following bill in chancery against Thomas D. Owings and others, to wit:

To the Honorable the Judges of the court of the United States of America holden in and for the seventh circuit and Kentucky district, in chancery sitting:

Humbly complaining sheweth unto the court your orator, Andrew Kincannon, that on the 29th of April, 1780, Robert Sayer made an entry with the surveyor for 2,000 acres of land in Kentucky, by virtue of a military warrant, "on the north side of Elkhorn, joining the land surveyed for Bartholomew Dandridge, on the northeast side, and running up the creek for quantity, as more fully will appear by a certified copy of said entry herewith exhibited. He saith that said Dandridge's survey had been made long before said entry, being an old military survey, made and marked plainly, and generally known to the persons acquainted in that part of the country, and from the description contained in the certificate of survey, might have been found by reasonable inquiry; and your orator avers that the said entry of Sayer was special and precise, legal and valid; that a survey was executed conformable to said location, and a grant issued thereon to said Sayer from the Commonwealth of Kentucky on the 26th March, 1795. That said Sayer, by deed, duly executed and recorded, has conveyed acres of said land to your orator, as more fully appears by his deed, herewith exhibited; the said land being in the county of Franklin, in the State of Kentucky; but now, so it is, that Thomas D. Owings, Robert, Senr., Benjamin Head, Erasmus Jones, Milton Stapp, William Branham, Catharine Fitz, — Allen, — Brashears, John Leach, Presley Neall, Charles Buck, Bunnion McAndrews, —— Green, William Blakey, Benjamin Luckett, James Blakey, Ralph Phillips, John Head, James Wilson, John Oliver, jun., Benjamin Cox, William Cox, James Briscoe, and Alexander Macey, citizens of the State of Kentucky, whom your orator prays may be made defendants to this bill, have possessed themselves of the land, holding, or pretending to hold under certain grants, which have been illegally and fraudulently obtained, interfering with the entry of said Sayer; that the surveys upon which said grants have been obtained were under color of *vague*, and *illegal*, and younger entries, and upon surveys made variant from any rational construction of the entries, respectively, by virtue of which they purport to have been made; and the said defendants, combining together with others unknown, refuse to yield possession or release the elder title to your orator; all which actings, &c., are against equity, &c. In tender consideration whereof, and for as much as your orator can only have relief in this court, where elder legal titles are made to yield to prior entries, to the end therefore that said defendants may discover what title they have to the land so aforesaid claimed by your orator, and by a decree of

this honorable court may be compelled to release all claim to the land within the deed of your orator, and to yield up possession to him, and that your orator may be quieted in the enjoyment of the land, and such other and further relief as his case may require and equity entitle him to; he prays process of subpœna against defendants, directed, &c., commanding, &c., and as in duty, &c.

BIBB, *for complainant.*

The following papers are referred to as a part of the foregoing bill, to wit:

29th April, 1780. Robert Sayers, heir to Alexander, deceased, enters 2,000 acres in Kentucky, by virtue of a military warrant, on the north side of Elkhorn, joining the land surveyed for Bartholomew Dandridge on the northeast side, and running up the creek for quantity.

A copy. Teste, O. BELT, *Deputy,*
For John M. Foster, R. L. O.

Isaac Shelby, Esq., Governor of the Commonwealth of Kentucky, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of a military warrant No. 174, there is granted by the said Commonwealth unto Robert Sayers, heir to Alexander Sayers, a certain tract or parcel of land, containing 2,000 acres, by survey, bearing date the 15th day of October, 1784, lying and being in the county of Fayette, and bounded as followeth, to wit: Beginning opposite the lower corner of a survey made for Bartholomew Dandridge on main Elkhorn, about four or five miles below the forks of said creek, on the banks thereof, a walnut and three buckeye trees; thence S. 72° E., 591 poles, to two white oaks and two honey locust trees cornering thereon; thence S. 18° W., 53 poles, to a small branch; course continued 243 poles, to a large drain; course continued 162 poles to the main creek Elkhorn, crossing the same; course continued 68 poles, making 520 poles in all, and cornering at a white oak, elm and sugar tree, ranging in a line; thence N. 72° W., 94 poles, to the main creek; course continued 497 poles, making 591 poles in all, to an elm, lynn and Spanish oak, standing on the bank of the said main creek, and opposite to the aforesaid Dandridge's upper corner, and binding on his line and on the creek, following the meanders, viz: N. 20° W., 68 poles, N. 71° W., 130 poles, N. 25° W., 46 poles, N. 55° E., 46 poles, E. 39 poles, N. 50° E., 58 poles, N. 20° E., 74 poles, N. 75° E., 36 poles, S. 30° E., 74 poles, N. 55° E., 120 poles, N. 25° E., 130 poles, N. 5° W., 58 poles, N. 45° W., 40 poles, N. 63° W., 36 poles, being 968 poles, down the meanders to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Robert Sayers, heir to Alexander Sayers, and his heirs for ever. In witness whereof, the said Isaac Shelby, Esq., Governor of the Commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of the said Commonwealth to be affixed, at Frankfort, on the 26th day of March, in the year of our Lord one thousand seven hundred and ninety-five, and of the Commonwealth the third.

[L. S.] ISAAC SHELBY.

By the Governor,
JAMES BROWN.

A copy. Teste, JOHN M. FOSTER, *R. L. O.*

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This indenture, made the twenty-fourth day of June, one thousand seven hundred and ninety-five, between Robert Sayers of the one part, of the county of Wythe, and State of Virginia, and Andrew Kincannon, of the county of Surry, and State of North Carolina, of the other part, witnesseth, that for and in consideration of the sum of one hundred and eighty pounds, current money of Virginia, by the said Andrew Kincannon to the said Robert Sayers in hand paid, before the sealing and delivering of these presents, the receipt of which he doth hereby acknowledge, he, the said Robert Sayers, hath granted, bargained, and sold, unto the said Andrew Kincannon, his heirs and assigns for ever, a certain tract or parcel of land held by the said Sayers under a patent bearing date the twenty-sixth day of March, one thousand seven hundred and ninety-two, containing twelve hundred acres, lying in Franklin county, formerly Fayette, and bounded as followeth, to wit: Beginning opposite the lower corner of a survey made for Bartholomew Dandridge on main Elkhorn, about four or five miles below the forks of said creek, on the bank thereof, a walnut and three buckeye trees; thence S. 72° E., 233 poles, to two buckeyes and an elm, near Coxe's cabin; thence S. 80° W., 268 poles, to a mulberry and elm; thence S. 72° E., 252 poles, to two hackberries and red oak, a corner to Gilbert's land; thence S. 18° W., with a line of said Gilbert's, 300 poles, to two poplars, said Gilbert's corner; thence N. 72° W., 485 poles, to an elm, lynn, and Spanish oak, standing on the bank of the creek, and binding thereon, N. 20° W., 68 poles, N. 71° W., 130 poles, N. 25° W., 46 poles, N. 55° E., 46 poles, E. 39 poles, N. 50° E., 58 poles, N. 20° E., 74 poles, N. 75° E., 36 poles, S. 30° E., 94 poles, N. 55° E., 120 poles, N. 25° E., 130 poles, N. 5° W., 58 poles, N. 45° W., 58 poles, N 45° W., 40 poles, N. 63° W., 36 poles, being in all 968 poles down the meanders to the beginning, together with its appurtenances to the same belonging, or in any wise appertaining thereunto, to the said Andrew Kincannon, his heirs and assigns for ever; and the said Robert Sayers doth, for himself and his heirs, covenant and grant to and with the said Andrew Kincannon, his heirs and assigns, that the said Robert Sayers the aforesaid land and premises hereby conveyed, with the appurtenances, that he will warrant and defend against the claim or claims of any person or persons whatsoever, unto the said Andrew Kincannon, his heirs and assigns, to his and their proper use and behoof. In witness whereof, the said Robert Sayers hath hereunto set his hand and seal, the day and year above written.

ROBERT SAYERS, Sen. [SEAL.]

Signed, sealed, and delivered in the presence of
ANDREW STEWART,
BAKER EWING,
DANIEL WEISIGER,
JOHN LOGAN.

FRANKLIN COUNTY, *August court*, 1795.

The within deed from Robert Sayers to Andrew Kincannon was produced in court and proven by the oaths of Baker Ewing, subscribing witnesses thereto, and the same is truly recorded.

Attest, DANIEL WEISIGER, *Clk.*

A copy. Teste, WILLIS A. LEE, *C. F. C.*

Upon which bill the following subpœna in chancery was issued, to wit:

The United States of America to the Marshal of the Kentucky district, greeting:

You are hereby commanded to summon Thomas D. Owings, Robert Church, Sen., Benjamin Head, Erasmus Jones, Milton Stapp, William Branham, Catharine Fitz, — Allen, — Brashears, John Leach, Presley Neale, Charles Buck, Bunnion McAndrews, —— Green, William Blakey, Benjamin Luckett, James Blakey, Ralph Phillips, John Head, James Wilson, John Oliver, jun., Benjamin Cox, James Briscoe, and Alexander Macey, citizens of the State of Kentucky, to appear before the Judges of our seventh circuit court of the United States in and for the Kentucky district, at the capitol, in Frankfort, on the first Monday in May next, to answer a bill in chancery exhibited against them by Andrew Kincannon; and this they shall in no wise omit, under the penalty of four hundred dollars each; and have then there this writ. In testimony whereof, John Marshall, Chief Justice of the United States, hath caused the seal of our said court to be hereunto affixed, this 29th day of December, 181 , and of our independence the

Attest, JOHN H. HANNA, *C. C. C. K. D.*

Marshal's return, to wit: Executed, 15th January, 1816, on Thomas D. Owings, John Leach, Presley Neale, James Blakey, Benjamin Luckett, Ralph Phillips, James Briscoe, and Alexander Macey; and executed on all the other within named defendants, except William Cox, William Blakey, and William Branham, the 9th February, 1816; William Branham is deceased. Executed on William Cox the 1st day of April, 1816, and not time to execute on William Blakey, who lives in Warren county.

CHAPMAN COLEMAN, *Deputy,*
For Robert Crockett, M. K. D.

And afterwards, to wit, at rules held in the clerk's office, in the month of May, of the court aforesaid, in the year 1816, came the defendant, Milton Stapp, by his counsel, and filed his answer herein; which answer is as follows, to wit:

The answer of Milton Stapp to the bill in chancery filed against him and others in the United States' court for the Kentucky district, by Andrew Kincannon. This defendant, saving all exceptions to the bill of the complainant, for answer saith, that he refers to the record for so much of the title of the complainant as he alleges to be of record, and when duly exhibited, he submits to it. The facts alleged by the complainant, under which he claims title, are not known by this defendant and not admitted, but full proof is required on each and every point; in particular he denies the validity of the entry and correctness of the survey set up by the complainant. This defendant holds the lands which he supposes the complainant claims, by deed from Thomas D. Owings, for about one hundred and three acres, who holds under Richard Owings, to whom a grant issued from the Commonwealth for said land, being 1,000 acres, dated on the 23d day of May, 1785. He admits the entry under which he claims is younger than that set up by the complainant; this defendant holds in severalty and not jointly with any other defendant. He denies fraud, &c., and prays to be hence dismissed, with his costs, &c.

C. S. TODD, *for defendant.*

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KENTUCKY, *Franklin county*, sct.

Milton Stapp this day, before the undersigned, a justice of the peace in and for said county, made oath that the statements made in the foregoing answer from his own knowledge are true, and those made from information he believes to be true. May 6th, 1816.

O. G. WAGGINER, *J. P.*

The following is the patent above referred to, to wit:

Patrick Henry, Esq., Governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of a pre-emption Treasury warrant No. 1,090, and issued the 16th day of August, 1780, is granted by the said Commonwealth unto Richard Owings, assignee of Jacob Myers, a certain tract or parcel of land, containing one thousand acres, by survey bearing date the 10th day of June, 1784, lying and being in the county of Fayette, on the waters of Elkhorn, and bounded as followeth, to wit: Beginning at two ashes, hickory, sugar tree, and white oak, on the top of a hill near Elkhorn creek; running thence east 280 poles, to Andrew Steele's pre-emption, and with said pre-emption 220 poles, crossing two branches and north Elkhorn, to a sugar tree, black walnut, and mulberry, on said line; thence north 320 poles, crossing Elkhorn and a small branch, to a white and black walnut by the side of a branch; thence west 500 poles, crossing three branches, to two ashes and hickory; thence S. 320 poles, crossing two branches, to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Richard Owings, and his heirs for ever. In witness whereof, the said Patrick Henry, Esq., Governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser seal of the said Commonwealth to be affixed, at Richmond, on the twenty-third day of May, in the year of our Lord one thousand seven hundred and eighty-five, and of the Commonwealth the ninth.

[L. S.] P. HENRY.

A copy. Teste, JOHN M. FOSTER, *R. L. O.*

The other papers referred to in the above answer are not filed.

And afterwards, to wit, at rules held as aforesaid, in the month of September, and year last aforesaid, (until which time this cause was continued on the rules,) came the complanant, by his counsel, and on his motion, it is ruled, that this cause be discontinued as to the defendant —— Allen.

And afterwards, to wit, at rules held as aforesaid, in the month of October, and year last aforesaid, (until which time this cause was continued,) the complainant, by his counsel, comes and says, that the allegations contained in his said bill are true, and that the allegations of the defendant, Milton Stapp, in his answer, so far as they contradict the allegations of said bill, are untrue. And it is ruled, that either party have commission to take depositions generally, in or out of this district, before any two justices of the peace, notary public, or mayor of any city, upon giving to the adverse party legal notice of the time and place of taking the same. And on motion of the complainant, by his counsel, it is ruled, that the defendants who have not answered the bill, appear here on or before the next rule day and answer the same, otherwise the bill will be taken for confessed against them, and the cause set for hearing at the next term.

And afterwards, to wit, at rules held as aforesaid, in the month of December, and year last aforesaid, (until which time this cause was continued,) came the defendant, Thomas D. Owings, by his counsel, and filed his answer herein; which answer is in the words and figures following, to wit:

The separate answer of Thomas D. Owings to a bill in chancery filed against him and others in the seventh circuit court of the United States for the district of Kentucky, by Andrew Kincannon. This defendant, now and at all times saving all exceptions to the bill of the complainant, &c., for answer to so much thereof as he is advised is material, he answers and says, he knows nothing of the matters and things set forth and charged by the complainant in his bill, under which he claims title to the land in the bill mentioned, and therefore doth not admit any of them, but requires full proof, &c. This defendant holds title to and possession of part of the land in the bill mentioned under a deed from John C. Owings, his brother, who held by the will of his father, John C. Owings, who held by deed from George Owings, the patentee. He relies upon the validity of the entry under which his grant is founded, and upon his legal title. He denies fraud, &c., &c., and prays to be hence dismissed, &c.

HARDING, *for deft. Thomas Deye Owings.*

And the complainant, by his counsel, comes and says, that the allegations of his bill are true, and that the allegations of the foregoing answer, so far as they contradict the allegations of the said bill, are untrue. And it is ruled, that a commission be awarded the parties to take depositions generally, in or out of this State, before any two justices of the peace, notary public, or mayor of any city, upon either party giving to the other legal notice of the time and place of taking the same.

And afterwards, to wit, at rules held as aforesaid, in the month of December, and year last aforesaid, (until which time this cause was continued on the rules,) came the defendant, James M. Blakey, by his counsel, and filed his answer herein; which answer is as follows, to wit:

The separate answer of James M. Blakey to a bill in chancery exhibited in the court of the United States of America holden in and for the seventh circuit and Kentucky district, by Andrew Kincannon, complainant, against Thomas D. Owings, the said Blakey, and others, defendants. This defendant, now and at all times saving and reserving to himself all and all manner of benefit and advantage of exception to the said bill of complaint, &c., for answer thereto, or unto so much thereof as he is advised is material for him to answer to, he answers and says, that himself and the defendant William Blakey, for themselves, and one Robert Branham, purchased of the agent of the defendant Thomas D. Owings, 245½ acres of land, lying in Franklin county, on the north fork of Elkhorn, which was conveyed to the said William Blakey and this defendant by deed, bearing date on or about the 17th day of October, 1812, and which is recorded in the clerk's office of the county court of Franklin, a duly authenticated copy of which, when filed with this answer, is referred to as an exhibit of his title. That this defendant and the said William Blakey conveyed, by special warranty, 66 acres of said 245½ to the said Branham, according to the understanding between them at the time of said purchase; that this defendant's interest and proportion of said land was 107½ acres. That said William Blakey conveyed his interest in and to 107½ acres to this defendant, and this defendant conveyed his interest in the residue to said William Blakey. That the said conveyances to W. Branham was made long before the commence-

ment of this suit. That this defendant, before he had notice of this suit, and he believes before the institution of it, sold to one Ralph Phillips the whole of his interest in said land, the said 107½ acres, and has conveyed the same to him, so that this defendant has no claim or title to the said 245½ acres of land, or any part thereof, and prays the advice of the court whether the complainant can have his bill against him. This defendant is advised and informed that the title under which he held the said land is a legal and valid one, superior to that of the complainant's, if the complainant's should interfere with it; and this defendant begs leave to refer this honorable court to the answer of the defendant Thomas Deye Owings, when filed, if not already filed, for an exhibition of the entry, survey, and patent, under which he claimed said land and sold to this defendant. This defendant does not admit any insufficiency in the entry, survey, or patent, under which the said Owings derived title. This defendant says it may be true that the complainant's entry is older than the one under which the defendant Owings claims, but he does not admit that the complainant's entry is special and precise, legal or valid, nor that the objects called for in said entry were notorious or existing at the time the same was made. This defendant knows nothing of his own knowledge of the title of the complainant, nor does he know that it interferes with any part of said 245½ acres, but has been informed that the complainant, under pretence of said title or claim, lays claim to the same or some part thereof. This defendant requires full and ample proof of all matters and things necessary to be proven and established, to support and maintain the complainant's claim against the title of the said Owings. This defendant states that during the time he had said 107½ acres of land in possession, that he made lasting and valuable improvements thereon. This defendant denies all fraud, &c., with which he stands charged, prays to be hence dismissed with his costs in this behalf compelled to expend, &c.

JAMES M. BLAKEY.

STATE OF KENTUCKY, *Warren county*, sct.

This day James M. Blakey, who has subscribed his name to the foregoing answer, came personally before me, Asa T. Mitchell, one of the Commonwealth's justices of the peace in and for said county, and made oath that the matters and things contained in said answer, so far as related of his own knowledge, are true, and so far as related from the knowledge or information of others, he believes to be true. Given under my hand, this 13th November, 1816.

ASA T. MITCHELL, *J. P.*

And afterwards, to wit, at rules held as aforesaid, in the month of June, 1818, (until which time this cause was continued,) came the defendants Robert Church and —— Luckett, by their attorney, and filed their answers herein; and the said complainant, by his counsel, says that the matters and things stated in his bill are true, and those stated in the said answers, so far as they contradict the allegations of his said bill, are untrue.

The separate answer of Robert Church to a bill filed against him and others in the circuit court of the United States for the seventh circuit and Kentucky district, by Andrew Kincannon. This defendant, saving, &c., for answer saith, it may be true that Robert Sayers made such entry as set forth in the bill, but this defendant cannot admit it, nor can he admit the

specialty of the said entry, or that the same is in any respect legal or valid, nor can he admit that the objects therein called for were notorious, and therefore requires of the complainant full and ample proof of the said matters, and every other matter alleged in the said bill. This defendant is advised to say and contend that the said entry of Sayers is vague and void, and has been improperly and fraudulently surveyed, and inferior to the claim under which this defendant holds the land demanded of him by the complainant in his bill. This defendant states that he holds the land for which he is sued by virtue of an entry in his own name for 2,497 acres, made on the day of , and the survey and patent founded thereon. This defendant is advised that his entry is special and valid, and has been surveyed according to law and location, and herewith files, as part of this answer, certified copies of his said entry, survey, and patent. This defendant further states, that he actually settled himself and family on his said land, surveyed and patented as aforesaid, in the year 1789, more than twenty years before the commencement of this suit, under and by virtue of his said claim, and has held and enjoyed actual and continued possession thereof ever since as his own property, and adverse to the title of the complainant, and those under and through whom he claims, making thereon, during that time, extensive, lasting, and valuable improvements; and this defendant pleads and insists on his said actual adverse and continued possession, and the equity, force and effect of the several statutes for the limitations of real actions in bar to the pretended equity and claim of the complainant's; without that, &c.; and this defendant denies all fraud with which is charged, and prays to be hence dismissed from all costs in this behalf expended.

JOHN POPE, *for the deft. Church.*

FRANKLIN COUNTY, sct.

This 12th day of May, 1817, the above named Robert Church made oath before me, a justice of the peace in and for the county aforesaid, that the matters stated in the above foregoing answer, he believes, to the best of his knowledge, to be true. Given under my hand, the day and year aforesaid.

CLEMENT BELL.

The following is a copy of the patent, (the entry and survey not on file,) above referred to, to wit:

Patrick Henry, Esq., Governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of a land office Treasury warrant No. 13,921, and issued the 21st day of August, 1782, unto Robert Church, there is granted by the said Commonwealth unto the said Robert Church, a certain tract or parcel of land, containing 2,497 acres, by survey bearing date the 6th day of October, 1784, lying and being in the county of Fayette, on Elkhorn, and bounded as followeth, to wit: Beginning at a black walnut, white ash, and elm, corner to Ovid McCrackin's pre-emption; thence with the line of said McCrackin's pre-emption S. 70° E., 342 poles, to a sugar tree and white oak saplings in the line of Andrew Steele's pre-emption, crossing main Elkhorn at 120 poles, and the north fork at 260 poles; thence north with Steele's and Dickinson's lines 675 *acres*, to two honey locusts and ash trees, corner to John Netherland's land, crossing the north fork of Elkhorn at 35 poles; thence N. 20° E., 320 poles, to a sugar tree and hackberry, a corner to said Netherland's land; thence N. 70° W.,

486 poles, crossing Elkhorn at 440 poles, to a white oak near the top of a clift; thence S. 13° E., 145 poles, to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Robert Church, and his heirs for ever. In witness whereof, the said Patrick Henry, Esq., Governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser seal of the said Commonwealth to be affixed, at Richmond, on the fifth day of December, in the year of our Lord one thousand seven hundred and eighty-five, and of the Commonwealth the tenth.

P. HENRY.

A copy. Teste,

A. P. COX, *Deputy*,
For John M. Foster, R. L. O.

The answer of —— Luckett to the bill in chancery filed against him and others in the United States' seventh circuit and Kentucky district, by Andrew Kincannon. This defendant, saving all exceptions to the bill of the complainant, for answer saith, that he refers to the record for so much of the title of the complainant as he alleges to be of record, and when duly exhibited, he submits to it. The facts alleged by the complainant, under which he claims title are not known by this defendant and not admitted, but full proof is required on each and every point; in particular he denies the validity of the entries and correctness of the surveys set up by the complainant. This defendant holds the land which he supposes the complainant claims, by bond from William Blakey, who held by deed from Thomas D. Owings, for 73½ acres, who held by deed from Richard Owings, to whom a grant issued from the Commonwealth for said land, being 1,000 acres. He admits the entry under which he claims is younger than that set up by the complainant; this defendant holds in severalty and not jointly with any other defendant. He denies fraud, &c., and prays to be hence dismissed, with his costs, &c.

C. S. TODD, *for deft.*

FRANKLIN COUNTY, sct.

This day Benjamin Luckett came before me, a justice of the peace for said county, and made oath that the within bill as stated from his own knowledge is true, and what is stated from the information of others, he believes to be true. Given under my hand, this 30th day of May, 1817.

CLEMENT BELL.

And afterwards, to wit, at rules held as aforesaid, in the month of August, and year 1818, (until which time this cause was continued on the rules,) came the defendant Thomas D. Owings, by his counsel, and gave the complainant a rule for hearing herein as to himself.

And afterwards, to wit, at rules held as aforesaid, in the month of October, and year last aforesaid, came the said defendant Owings, by his attorney, and set this cause for hearing as to himself.

And afterwards, to wit, at the November term of the court aforesaid, in the year 1819, on motion of the complainant, by his counsel, leave is given him to file a bill of revivor herein against the heirs of the defendant Robert Church, deceased, to wit: Thomas Church, William Church, and Robert Church, which was done accordingly. It is therefore ordered, that this suit stand revived in the of the said heirs; which bill of revivor is in the words and figures following, to wit:

To the Honorable the Judges of the court of the United States in and for the seventh circuit and Kentucky district, in chancery sitting:

Your orator, Andrew Kincannon, sheweth, that heretofore, in this court, he exhibited his bill of complaint, founded on his interest in the patent, survey, and entry of Robert Sayers, in the district aforesaid, adjoining B. Dandridge's survey. That Robert Church, one of the defendants to his bill, appeared and answered, and has since departed this life, leaving his sons Thomas, William, Henderson, and Robert, in possession of the land claimed by your orator; the said sons claiming under said Robert by descent, or by some act unknown to your orator, done or made since the answer of said Robert (now deceased) was put in; your orator therefore prays that said original bill and proceedings remaining in this court yet unheard, may be made a part of this, and that the said cause may be revived against the said sons of Robert Church, deceased, and to that end he prays the said cause may be revived, and he prays relief as in his original bill, &c.

BIBB, *for complainant.*

And afterwards, to wit, at the May term of the court aforesaid, in the year 1820, came the defendants, by their counsel, and on his motion, leave is given the defendants to amend the survey returned and filed herein, and likewise to take depositions generally, in or out of this district, before any two justices of the peace, notary public, or mayor of any city, upon giving to the adverse party legal notice of the time and place of taking the same. And it is further ordered, that the surveyor of county do go on the land in controversy between the parties, on the day of next, if fair, if not on the next fair day, and then and there survey and lay off the same as either party may direct, having due regard to all deeds and other evidence that may be produced, report all matters of fact specially, and return one fair plat and certificate thereof into the clerk's office of this court thirty days at least before the day of trial; and the marshal or one of his deputies is directed to attend the said surveyor to remove force should any be offered.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of June, and year 1820, (until which time this cause was continued,) came the defendants John L. Head and Charles Buck, by their attorney, and filed their answers herein; which answers are as follows, to wit:

The separate answer of John L. Head to a bill in chancery exhibited against him and others in the circuit court of the United States for the district of Kentucky, by Andrew Kincannon, complainant. This defendant, saving, &c., for answer, &c., says, that he has seen such an entry as mentioned in the bill of the complainant, but its specialty or validity he does not know or admit, nor does he admit that it was properly surveyed; therefore of every requisite to a perfect equity he requires full proof. This defendant holds 100 acres of the land granted by patent to Richard Owings, and which is alleged to interfere with the title of the complainant, by deed from Thomas D. Owings, who purchased from John C. Owings, who held by devise of his father, John C. Owings, deceased, who purchased from George Owings, the heir at law of Richard. He does not admit his title in any respect defective, but submits that matter to the court. He denies fraud, and prays to be dismissed, with his costs.

JA. HAGGIN, *for deft.*

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May term, 1820. Sworn to in open court by John L. Head.
Attest, JOHN H. HANNA, *C. C. C. K. D.*

The separate answer of Charles Buck to a bill in chancery exhibited against himself and others in the circuit court of the United States for the district of Kentucky, by Andrew Kincannon, complainant. This defendant, saving, &c., for answer says, that he purchased a small tract of land on the waters of north Elkhorn, about 66 acres, from John H. Branham, who held the same under Col. Thomas D. Owings; how the said Owings derived his title this defendant is not prepared to shew; but he, this defendant, understands that this land so purchased by this defendant is within the claim of the said complainant; he does not admit the complainant's title, or that his own is in any respect defective, but submits the matter to the court. He denies fraud, &c., and prays to be dismissed, with his costs.

CHARLES BUCK.

Sworn to in open court. Attest,
JOHN H. HANNA, *C. C. C. K. D.*

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of January, and year one thousand eight hundred and twenty-one, (until which time this cause was continued,) came the complainant, by his counsel, and on his motion, it is ruled, that this cause be dismissed as to the defendants William Blakey, Catharine Fitz Allen, —— Brashears, and —— Green, and that it abate as to defendant William Branham.

And afterwards, to wit, at rules held as aforesaid, in the month of February, and year last aforesaid, came the complainant, by his counsel, and gave the defendants, James M. Blakey, Milton Stapp, John L. Head, Charles Buck, Benjamin Luckett, and the heirs of Robert Church, a rule for hearing herein. And the defendants Benjamin Head, Erasmus Jones, John Leach, Presley Neale, Bunnion McAndrews, Ralph Phillips, James Wilson, John Oliver, jr., Benjamin Cox, William Cox, James Briscoe, and Alexander Macey, having failed to answer the complainant's bill, on motion of the complainant, by his counsel, it is ruled, that the same be taken pro confesso against them, and the cause set for hearing at the next term of this court.

And afterwards, to wit, at rules held as aforesaid, in the month of April, and year last aforesaid, came the complainant, by his counsel, and set this cause for hearing as to all the defendants.

And afterwards, to wit, at the May term of the court aforesaid, in the year last aforesaid, came Church's heirs and filed their answer, to which the complainant replied. Whereupon the cause came on to be heard upon the bill, answers, and exhibits, but the court not being advised of and concerning the premises, took time; which answer is in the words and figures following, to wit:

The answer of Robert Church, Thomas Church, William Church, and Henderson Church, heirs at law of Robert Church, deceased, to the original bill and bill of revivor filed against them in the circuit court of the United States for the seventh circuit, by Kincannon, complainant. These defendants, in addition to the matters contained in the answer of their ancestor, filed herein, on which they rely, further state, that their said ancestor, some time in the year 1793, settled his son Robert, one of the defendants, on part of his said tract of 2,497 acres, different from that on which he fixed his own residence, and within the lines of the survey claimed by

the *claimant*, and, that he, the said Robert, and Robert his son, one of the present defendants, have continued to reside at the places of their respective residences ever since, claiming to hold the same to the extent of the boundary of the patent of the said Robert the elder; and that the said Robert the elder, by the said defendant Robert, was then in the adverse possession of the said survey and every part thereof, interfering with the claim of the complainant at the time he, the complainant, received a conveyance thereof from him, the said Sayers, by reason whereof these defendants are advised the said conveyance is entirely invalid, and conveyed no title to the complainant. J. TALBOT, *for def'ts.*

And afterwards, to wit, at a subsequent day of the term last aforesaid, in the year last aforesaid, on motion of the complainant, leave is given him to file an amended and supplemental bill herein; which bill follows in these words and figures, to wit:

To the Honorable the Judges of the court of the United States for the seventh circuit and Kentucky district, in chancery sitting:

Your orator, Andrew Kincannon, by way of amendment and supplement to his bill formerly exhibited in this honorable court, and now depending herein, against the heirs of Robert Church and others, sheweth, that after making of the said entry in his original bill set up, and long before the grant issued to said Sayers, he (said Sayers) on or about the day of in the year 1785, (the precise time, however, your orator cannot state, for the reasons herein after explained,) for a valuable consideration paid to him by Thomas Quirk, in horses and other things, to the value of £150, executed his obligation, binding himself and his heirs to convey to said Quirk 1200 acres of land, part of the said entry and survey, adjoining said Dandridge's military survey, as soon as said Sayers should obtain the grant of the Commonwealth by virtue of said entry. Your orator states that he became the security of said Quirk, and had paid large sums of money for him; and to reimburse your orator the said sums, and for additional valuable considerations, the said Quirk sold to your orator the land so purchased of said Sayers. That the bond of Sayers before mentioned, filed in the clerk's office of Montgomery county, in Virginia, a suit having been brought on said bond by Quirk against said Sayers, but afterwards dismissed, and therefore said Quirk drew an order on said Sayers requesting him to convey the said 1200 acres of land to your orator, which was delivered to your orator, bearing date on the 11th of September, in the year 1792, which order was on the same day accepted by the said Sayers with his own hand, and by his name and writing at the foot thereof; upon which said order so accepted, and upon the considerations before set forth, the said Sayers, after the emanation of his grant from the Commonwealth, executed the deed to your orator of the day of , in the year , in the original bill mentioned and heretofore exhibited. Your orator further states, that after the said deed was executed as aforesaid, the said Thomas Quirk exhibited his bill of complaint against said Sayers and your orator, pretending that said sale to your orator was conditional, or only as security for said moneys so paid for him by your orator, and setting up the said bond executed by said Sayers. That such suit was instituted in the quarter sessions of Franklin county, in the Commonwealth of Kentucky, in the year 1795; that said Sayers answered, and acknowledged and set forth the valuable consideration by him

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received of Quirk, and the obligation which had been given and filed in Montgomery aforesaid, the acceptance of the order aforesaid, and the deed of your orator. Your orator answered, and set forth the consideration and moneys paid as security for said Quirk, and the said order was exhibited in said court, with the acceptance of Sayers aforesaid, and various depositions were taken, proving the valuable considerations paid by your orator; and after various proceedings and continuances, the said court adjudicated the said matters, and pronounced a decree in the year 1801, dismissing said bill; and upon motion, the said Quirk obtained a re-hearing. That said court of quarter sessions was, by law, abolished, and the suits pending therein transferred by law to the circuit court of Franklin, in and for the Franklin circuit, in the Commonwealth of Kentucky; and finally, in the year 1807, at the February term of said court, the suit was abated by the death of said Quirk, and has never since been revived; all which will more fully and at large appear by the record and proceedings in said suit remaining in the said Franklin circuit court, a full and complete transcript whereof is herewith exhibited, duly certified, and prayed to be taken as a part of this his bill. Your orator states, he never had the said bond of Sayers to Quirk, as is fully explained by said record and transcript of the proceedings, and the order as aforesaid given and accepted, and the considerations, valuable and meritorious, as well between Sayers and Quirk, as between said Quirk and your orator, are fully set out, acknowledged, and proved, by the bill, answers, exhibits, and depositions, in said cause. Your orator states, that said Sayers is a citizen of the State of Virginia, said Quirk's heirs are unknown to your orator, and therefore he cannot make the said Sayers, (a citizen and resident of Virginia,) nor the heirs of Quirk, (who are unknown,) parties defendant in this suit; but your orator humbly insists, that after the aforesaid suit between said Quirk, as complainant, and said Sayers and your orator, as defendants, wherein the valuable considerations aforesaid are made so manifest, and after the title of the Commonwealth granted to Sayers, (by the patent set forth in the original bill,) has, by the said Sayers, been transferred to your orator by solemn deed, it cannot or will not be required of your orator to drive said Sayers into a litigation when no cause for litigation against or with him exists; nor will it be required of your orator to relitigate or prove again those matters so apparent in the suit in chancery aforesaid referred to and shewn by the record herewith exhibited, but of this your orator asks the advice of this honorable court, hereby offering to make said Sayers a co-complainant if it should be thought necessary, as he is advised that said deed and other matters in said record will warrant this respondent in using said Sayers's name for the recovery of the estate in said deed mentioned. Your orator is advised to say, and humbly suggests, that the evidences of fair and valuable consideration, connecting your orator's claim with the entry and grant of said Sayers aforesaid, are so full, and his claim so equitable, that your honors will not infect his said claim with the odium of champerty or maintenance, nor apply the doctrine of pretenced titles to a purchase so made under faith of a solemn grant of the State, that the existence of the adverse grants, as appearing in this cause, cannot be charged as the fault of said Sayers, or of said Quirk, or of your orator, but rather as the fault of the Commonwealth of Virginia in adopting an imperfect and ill digested system for granting her vacant lands, or as the fault of the defendants, (or of those under whom they derive their claims,) in making posterior entries in defiance of the *prior* special entry of said Say-

ers. And your orator is advised by his counsel to say, that the doctrine of livery, of seizin, and pretenced titles of the common law of England, which are founded on and grow out of the English tenures, ought not to be applied by a court of equity to a title derived under the statutes of Virginia establishing her land office, nor to the buying selling of those statutory titles so granted under the said act of Virginia of 1779, much less to this case as now exhibited in this honorable court by your orator, and as defended and insisted on by the heirs of the said Robert Church in their answer; but of all these matters your orator prays the advice of this honorable court, hereby offering to use his best endeavors to produce the original bond of Sayers to Quirk, if in existence, or if the court of Montgomery will permit the withdrawal of it, should it be there, and should the date thereof or the production thereof be deemed material by this court after inspecting the record as aforesaid, exhibited in this supplemental bill. Your orator, upon the matters of his original bill and bill of revivor, prays for such relief as his case requires and entitles him to, and as in the original bill is sought for, and as in duty, &c.

BIBB, *for complainant.*

The record above referred to is as follows, to wit:

STATE OF KENTUCKY, sct.

Pleas before the Honorable Judges of the Franklin circuit court, at the court-house, in the town of Frankfort, on Monday, the 25th day of February, one thousand eight hundred and seven.

Be it remembered, that heretofore, to wit, on the day of , 1795, came Thomas Quirk, by John Breckenridge, Esq., his counsel, and filed in the clerk's office of the court of quarter sessions of Franklin county, his certain bill of complaint against Robert Sayers; which bill is in the words and figures following, to wit:

To the honorable the court of quarter sessions for the county of Franklin, in chancery sitting:

Humbly complaining sheweth unto your honors your orator, Thomas Quirk, that in the year of your orator purchased of a certain Robert Sayers a tract of land, containing 1200 acres, being part of a 2,000 acre survey, (800 acres being previously sold,) made on a military warrant in the name of said Sayers, and lying on the main and north fork of Elkhorn, for the title of which he, the said Sayers, executed a bond for the conveyance of, as above stated. Your orator further sheweth, that in the year of he instituted a suit in the county court of Montgomery against said Sayers, on said bond, when it was filed. Your orator further sheweth, that he, the said Sayers, informed your orator that he would not procure a grant for said land in consequence of a caveat being entered against him, and consequently the conveyance he would then make would be valid, assuring your orator at the same time that as soon as a grant could issue he would convey to him the land as above set forth, and further, that he would dismiss the same; in consequence of which the suit was dismissed. Your orator further states, that he has long since paid the full consideration for said 1200 acres of land. Your orator further states that about the year of a certain Kincannon paid, as security for your orator, a sum of about £100, who called on your orator, when in a distressed situation, to repay the aforesaid sum, which he had it not in his power to comply with; that in order to ob-

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tain time to raise the money, and to avoid the distresses to which he might have been exposed by a suit, did execute a certain instrument of writing, with an intention of securing to the said Kincannon the payment of the £100 and interest, which said instrument of writing he never designed or conceived would divest him of his title, or convey to the said Kincannon any thing more than a claim until the aforesaid debt and interest should be discharged. Your orator prays that the aforesaid Robert Sayers and Andrew Kincannon may be made defendants to this bill. Your orator further states, that the said Robert Sayers did procure from the said Kincannon the aforesaid instrument of writing, and that some time in the year 1794 he met with the said Sayers, who was in possession of said instrument of writing, who, agreeably to your orator's real intention, acknowledged that the tract of land was only collaterally bound for the payment of the aforesaid debt of about £100 and interest, which he, the said Sayers, did then demand of your orator, and offered, on the receipt thereof, to convey to your orator the said tract of land agreeably to the original agreement. Your orator further states, that in consequence of this he immediately, a very considerable sacrifice of his property, in order to raise the amount of the debt and interest due Kincannon, which your orator, by his agent, offered to pay unto said Sayers on the receipt of his title which was by him demanded. But now, so it is, may it please your honors, that the said Robert Sayers has combined with the said Kincannon to defraud your orator of the said tract of land, which is at least worth £2,000, under the pretence that the instrument of writing for the security of £100 and interest, due Kincannon, divests your orator of any further claim to said tract of land, and has absolutely refused to convey to your orator the same agreeable to his bond, although he knows that in justice and equity he is entitled to the same. In tender consideration whereof, and in as much as your orator is remediless at common law, and can only be relieved in a court of chancery, where contracts are carried into specific execution; to the end therefore that the said defendants may true and perfect answers make to the premises upon their corporal oaths, as if the same were herein repeated and interrogated, but more especially that he may say whether yor orator did purchase of him the 1200 acres of land as set forth; if he did not execute a bond for the conveyance of the same; if a suit was not instituted against him on said bond in the court of Montgomery county; if he did not obtain a dismission of said suit as set forth; and if he did receive from your the full consideration for the said land; and that he may further say, if he did not, in the year 1794, demand the amount of the debt and interest due Kincannon, and agreed that on the receipt of the same to convey the land agreeably to his original contract, and to give up to your orator the instrument given to Kincannon; and further, if he has not, since that time, combined with the said Kincannon to withhold from your orator the land, and if they have not agreed to divide the tract between them in case they succeed in the attempt; whether a demand was not made of the title and an offer on the receipt of the same to discharge the amount due said Kincannon; and if he did not positively refuse either to convey the land or accept the amount of Kincannon's debt and interest; and that the said defendants may be compelled to convey to your orator the aforesaid land; and that your honor may grant such other and further relief in the premises as the justice of the case may require.

JOHN BRECKENRIDGE, *for compl't.*

Col. TODD: The only amendments I shall make to this bill is to make the parties defendants thereto in a proper manner, and put such interrogatories to Mr. Kincannon as the body of the bill will lead to. At this time I have not leisure to draw it fully; no alteration will be made as to the substance. JAMES BLAIR.

And thereupon the complainant, by his counsel, sued out of the clerk's office of the court aforesaid, the following subpœna in chancery, to wit:

The Commonwealth of Kentucky to the Sheriff of Franklin county, greeting:

You are hereby commanded to summon Robert Sayers to appear before the justices of our court of sessions of Franklin county, at the court-house, in the town of Frankfort, on the first day of the next July court, to a bill of complaint exhibited against by Thomas Quirk, and this he shall in no wise omit, under the penalty of £100; and have then and there this writ. Witness William Trigg, clerk of our said court, this 20th day of June, 1795, and in the 3d year of the Commonwealth.

WM. TRIGG, *C. C. Q. S.*

Upon which the sheriff made the following return: Executed 22d June, 1795. JOHN SMITH, *S. F. C.*

And afterwards, to wit, at a court of quarter sessions holden at the court-house, in the town of Frankfort, on the 20th day of July, 1796, this cause was continued.

And afterwards, to wit, at a court of quarter sessions holden at the court-house, in the town of Frankfort, and county of Franklin, on the 20th day of October, 1796, on the motion of the defendant, by his attorney, it is ordered, that this suit be remanded to the rule docket, and that Andrew Kincannon be made a part of defendants thereto. And on the motion of the plaintiff, by his attorney, leave is given him to amend his bill.

And afterwards, to wit, at rules held in the clerk's office, on the day of July, August, September, 1796, this cause was continued.

And afterwards, to wit, on the 26th day of October, in the year aforesaid, the defendant, Andrew Kincannon, filed his answer herein; which is in the words and figures following, to wit:

The separate answer of Andrew Kincannon to the bill of complaint exhibited against him and Robert Sayers in the court of quarter sessions for the county of Franklin, by Thomas Quirk. This defendant, now and at all times hereafter, saving and reserving to himself all manner of advantage and benefit of exception to the many errors, untruths, and insufficiencies in the said bill contained, for answer thereto or to so much thereof as he is advised it is material for him to answer unto, he answereth and saith, that he admits that it may be true that defendant Sayers did execute a bond to the complainant for the conveyance of 1200 acres of his military claim, lying on main Elkhorn, in the now county of Franklin, but this defendant never saw the said bond, and prays that the complainant may be compelled to produce the same. This defendant admits such a conversation might have passed between the complainant and the defendant Sayers as is set forth in the said bill, respecting the caveat that was depending to prevent a grant from issuing for the said land. This defendant answering, saith, that in the year he became security for the complainant to a certain Honacre,

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and that after he had removed to the State of North Carolina an attachment was issued against his estate and levied in the hands of a certain Hugh Montgomery, and him summoned as a garnishee, who was indebted to this defendant in the sum of £200 in commutables; that upon being informed of these circumstances he returned to Virginia, and was obliged to make considerable sacrifices to raise the said debt, which, with interest and costs, exclusive of the sheriff's commissions, amounted to £102 6 0, or thereabouts, besides his own costs and trouble in defending said suit. That in order to raise money he made considerable discounts in debts which were owing to him to pay the said debt, particularly to a certain William Bell he discounted £22 10, to a certain James Nevill £10, so that this debt was actually out of pocket the sum of £134 16, besides the sheriff's commissions and his own costs and trouble. This defendant admits that on the 11th day of September, 1792, that the complainant drew an order in favor of this defendant on the defendant Sayers, directing the said Sayers to convey to this defendant the said 1200 acres of land, but this defendant denies positively that it was only intended to be a security for the money and interest which he had paid for the complainant; and says, that being at Wythe court-house, he was informed by a certain Joshua Jones that the complainant was there and wanted to sell this defendant a tract of land in Kentucky to discharge the aforesaid debt; that after seeing the complainant, he proposed to sell said land to this defendant, and wished him to pay to the said Joshua Jones the sum of £20, and to a certain William Boyd the sum of £30, which he owed to them. That the defendant Sayers being at court he made every necessary inquiry respecting the said land, and he finally made an absolute purchase of the same of the complainant, and agreed that if he obtained the title to the said land, to pay to the said Jones the sum of £20, and to pay to the said Boyd the sum of £30; that the complainant then drew a written order on the defendant Sayers, directing him to make a conveyance of the said land to this defendant, which order was, on the same day, accepted by the defendant Sayers, an attested copy whereof is hereunto annexed, and which this defendant prays may be received as a part of this answer. This defendant, further answering, denies that any advantage was taken of the complaint, but expects to prove many acknowledgments by the complainant that he had sold the said land to this defendant, and that he had received full satisfaction for the same. That the caveat before mentioned having still continued, a grant did not issue until the day of 179 , which circumstance prevented the said Sayers from making the conveyance to this defendant for some time; but on the day of 179 he did execute a deed to this defendant for the said land, which is admitted to record in the county court of Franklin. This defendant denies that the said Sayers ever procured from him the said order until he made a deed, or that he ever had even possession thereof, or that he ever was his agent, authorized to demand any payment from this complainant, for this defendant considered that as soon as the land was conveyed that the complainant was no longer his debtor, and therefore had no right to make any demand of him. This defendant conceives himself to be a real bona fide purchaser for a valuable consideration, and that in equity and justice the said land is his property. This defendant denies all unlawful combinations, &c. and prays to be hence dismissed, with his reasonable costs and charges herein most wrongfully sustained.

FRANKLIN COUNTY, sct.

This day Andrew Kincannon came before me, a justice of the peace for the said county, and made oath that the contents of the foregoing answer, so far as it relates to his own knowledge, is true, and what is related from information, he believes to be true. Given under my hand, this 26th day of October, 1796.

BAKER EWING.

And afterwards, to wit, on the day of 1797, the defendant, Robert Sayers, filed his answer herein; which is in the words and figures following, to wit:

The separate answer of Robert Sayers to the bill of complaint exhibited against him and Andrew Kincannon in the court of quarter sessions by Thomas Quirk, complainant. This defendant, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors, insufficiencies, and untruths, in the complainant's said bill contained, for answer thereto or so much thereof as it is material for him to answer unto, he answereth and saith, that he admits that he sold to the complainant 1200 acres of his military claim, lying on main Elkhorn, in the now county of Franklin, and received a wagon half worn, two mares and colts, and a horse, and a bond on a certain Jacob McCraw, the whole amounting, by estimation, to £150, for which land this defendant did execute his bond for a conveyance thereof. This defendant also admits that the complainant did institute a suit in Montgomery court against him for the land, which was afterwards dismissed, but not for the reasons stated in the said bill, but because this defendant was informed that the patent was then in Kentucky, and supposed that a deed must be made and executed there. This defendant, further answering, saith, that after the suit aforesaid was dismissed, and in the month of September, 1792, he happened at Wythe court-house, and there met with the complainant and the defendant Kincannon, when he understood from both of them that the complainant had sold the said land to the defendant Kincannon. The complainant drew an order, in writing, on this defendant, directing him to convey the said land to the said Kincannon, which defendant accepted in the presence of witnesses, and endorsed the same on the said order, upon the promise of the complainant to deliver up the said bond which had been given for the conveyance, and which was filed in Montgomery office. This defendant afterwards came to Kentucky and found that a patent had not issued, but that a caveat had been entered and dismissed, which had prevented the issuing thereof; he returned to Virginia, and went to Richmond, sent out the works to the register's office, and the grant issued on the day of 179 ; and on the day of 179 , this defendant executed a conveyance to the said Kincannon, according to his undertaking, by accepting the said order, and took up the same, which is hereto annexed, and which he prays may be received as a part of this answer. This defendant denies that he ever procured the said order from the said Kincannon before he executed the conveyance, nor did he ever see it after his acceptance until that time. He denies that he ever acknowledged that the land was only collaterally bound for the payment of the complainant's debt to the said Kincannon, for he did not know the sum for which he was indebted, and always understood that a positive and not conditional sale had taken place; neither did this defendant ever make any demand of the complainant for his debt to the other defendant, as he never

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was his agent or authorized to make such a demand. This defendant denies that the complainant ever offered to pay the debt due to Kincannon, and even if he had, this defendant would not have received it, as he had no authority for so doing, neither did he know the amount of that debt. This defendant admits that in the year 1794 the complainant demanded a title, and that this defendant refused to convey, because he conceived himself bound to convey to Kincannon only, or his order. But this defendant, conceiving the said complainant to be in a state of continual intoxication, paid little regard to what he said or said himself, and conceived that it was the offspring either of liquor or attempts of some designing person to make some speculation out of him. This defendant denies positively that there is any combination between him and the defendant Kincannon, or that the land is to be in any way divided, or that any benefit or advantage is to be revived to him in any manner, for he conceives the land to be the sole property of the said Kincannon, and that when he conveyed it to him, he did nothing more than he conceived he was bound to do according to the acceptance of the said order. This defendant expects that the complainant shall be compelled to produce the bond which this defendant executed to him for the conveyance of the said land, and that the same will be directed to be given up agreeable to the promise of the complainant at the time this defendant accepted the said order drawn in favor of Kincannon, before referred to. This defendant denies all unlawful combination, and what is not hereby answered, traversed, or denied, is true; and he prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

ROBERT SAYERS.

FRANKLIN COUNTY, sct.

This day Robert Sayers personally appeared before me, a justice of the peace for the county aforesaid, and made oath that what is contained in the foregoing answer, as far as relates to his own knowledge, is true, and what is related from information, he believes to be true. Given under my hand, this 4th day of January, 1797.

WILLIAM TRIGG.

The following is a copy of the order which is referred to in the foregoing answer, to wit:

SIR: You will please to convey the title of that tract of land you sold me of twelve hundred acres on Elkhorn, in Fayette county, to Capt. Andrew Kincannon, and oblige your humble servant,

THOMAS QUIRK.
September 11th, '92.

To Capt. ROBERT SAYERS.

Teste, JOSEPH CROCKETT,
DANIEL CARLAIN.

I do accept of the within order, this 11th day of September, '92.

ROBERT SAYERS.

At a court held for the county of Wythe, on Tuesday, the 11th day of November, 1795, this order from Thomas Quirk to Robert Sayers was proved in court by the oath of Joseph Crockett, one of the subscribing witnesses thereto, and ordered to be recorded.

A true copy from the record book. Teste,

ROBERT CROCKETT, *C. W. C.*

VIRGINIA, *Wythe county*, to wit:

I, Robert Crockett, clerk of the said county of Wythe, do hereby certify, that James McGavocks, gentleman, is the presiding justice of the peace in the county of Wythe aforesaid, duly commissioned and qualified according to law. In testimony whereof, I have hereunto set my hand and affixed my seal, (having no seal of office,) this 14th day of September, 1796.

ROBERT CROCKETT, [SEAL.]

VIRGINIA, *Wythe county*, to wit:

I, James McGavocks, presiding justice of the peace in the county aforesaid, do hereby certify, that Robert Crockett is clerk of the said county of Wythe, duly appointed and qualified according to law. Given under my hand, this 16th day of September, 1796.

JAMES McGAVOCKS.

And afterwards, to wit, at rules held in the clerk's office, on the day of March, April, May, June, July, August, September, and October, 1796, this cause was continued.

And afterwards, to wit, at rules held in the clerk's office, in the year 1798, this cause was continued.

And afterwards, to wit, at rules held in the year 1799, this cause was continued.

And afterwards, to wit, at rules held in the year 1800, this cause was continued.

And afterwards, to wit, at a court of quarter sessions holden at the court-house, in the town of Frankfort, on the 26th day of May, 1801, ordered, that this suit be continued until the next court.

And afterwards, to wit, at a court of quarter sessions holden at the court-house, in the town of Frankfort, on the 1st day of August, 1801, came the parties, by their attorneys, and on the motion of the complainant for a continuance, it is ordered, that this cause be continued until the second day of the next court, at which time a trial shall be had by a rule of this court.

And afterwards, to wit, at a court holden at the court-house, in the town of Frankfort, on the 30th day of October, 1801, came the parties, by their counsel; the bill and answers being read, depositions taken and returned, and the arguments of the counsel, on both sides, being fully heard, and the court not being sufficiently advised of and concerning the premises, took time, &c.

And afterwards, to wit, at a subsequent day of the term last aforesaid, the court having took time herein, and now being sufficiently advised of and concerning the premises, it is considered by the court that the bill aforesaid be dismissed, and that the defendants recover against the complainant their costs by them in this behalf expended.

And afterwards, to wit, at a court holden at the court-house, in the town of Frankfort, on the 2d day of November, 1801, the complainant, by James Blair, Esq., his attorney, came into court and filed an affidavit that new matter has been discovered; on the motion of the complainant, by his attorney aforesaid, a re-hearing is granted him upon the payment of costs, and it is ordered, that this cause be remanded to the rule docket, and leave be given the complainant to amend his bill.

And afterwards, to wit, at a circuit court holden at the court-house, in the

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town of Frankfort, on the 18th day of July, 1803, ordered, that this suit be continued until the next term.

And afterwards, to wit, at a court holden for the circuit aforesaid, on the 17th day of October, 1803, ordered, that this suit be continued until the next court.

And afterwards, to wit, at a court holden for the circuit aforesaid, on the 16th day of July, 1804, this cause was continued.

And afterwards, to wit, on the 15th day of July, 1805, this cause was continued; and afterwards, on the 22d day of October, 1805, this cause was continued; and on the 19th day of February, 1806, this cause was continued; and afterwards, on the 21st day of October, 1806, this cause was continued.

And now, at this day, to wit, at a court holden for the circuit aforesaid, on the day and year first herein mentioned, this suit abates by the death of the complainant.

The following are copies of the depositions and exhibits which were read as evidence on the trial of this cause, to wit:

The deposition of Joshua Jones, who being duly sworn, deposeth and saith, that he, this deponent, was present when Thomas Quirk gave Andrew Kincannon an order to Robert Sayers to make him, the said Kincannon, a right to 1200 acres of land lying in Kentucky, which was the land said Quirk had purchased from said Sayers. This deponent further saith, that Quirk said Sayers might have the land back again if he would pay Kincannon his debt, and the debt due this deponent of about £30, and a debt due William Boyd of about £30; he, the said Quirk, told this deponent he might have the land on the same terms. This deponent further saith, that he was present when the said Quirk offered the land to said Robert Sayers, who replied he was not able to pay the three debts, and that after that the said Kincannon came to the court-house and purchased the said land, as before mentioned.

JOSHUA JONES.

JOSHUA STEPHENS, H. SANDERS, } *Justices in said county.*

The deposition of Daniel Weisiger, who being duly sworn, deposeth and saith, that some time in the spring of the year 1794, (as well as the deponent recollects,) the defendant Sayers came to his house in Frankfort, and sent for the complainant Quirk, who was at that time in Frankfort; after their being some time together, the deponent going into the room heard the defendant Sayers and the complainant Quirk disputing about land; they after some time parted for the evening, and met again the next morning, when the deponent heard the defendant Sayers, tell the complainant Quirk, that if he would pay him, the defendant Sayers, the sum of £120, which he owed the defendant Kincannon, he would make him, the complainant, a title to the land; that the title was in him, and if he did not pay the money he would make a title to the defendant Kincannon: the deponent understood it was a tract of 1200 acres of land on Elkhorn. In consequence of which the deponent was induced to make the defendant Quirk, an offer for the land of £500, and to discharge the demand which the said Kincannon had against the said Quirk, which offer the said Quirk refused. And furthermore the deponent saith not.

DANIEL WEISIGER.

The deposition of James Newell. who being duly sworn, deposeth and saith, that some time in the year 1792, he, this deponent, paid up the balance of a judgment against Andrew Kincannon on account of Thomas Quirk, which judgment was due to the estate of Joseph Baker, deceased, which debt or judgment cost the said Kincannon a hundred and thirty or forty pounds. This deponent further saith, that this debt was paid in consequence of a purchase of a certain tract of land, containing 1200 acres, lying in Kentucky, on Elkhorn, which land said Kincannon purchased of Thomas Quirk, and said Quirk purchased the same from Robert Sayers. This deponent also understood that the said Kincannon was to pay a certain Joshua Jones twenty some odd pounds, and a certain William Boyd thirty pounds, when the land should be obtained clear of disputes; and further, this deponent saith, that he often heard Thomas Quirk say he had sold the land he had purchased of Sayers to the said Kincannon. This deponent further saith, that he was at the court-house the day the bargain was made between Quirk and Kincannon, as they both told him. And further saith not.

JAMES NEWELL.

The deposition of James Roberts, who being duly sworn, deposeth and saith, that some years ago, the time this deponent does not recollect, that Robert Sayers and Thomas Quirk happened at this deponent's house, and he heard the said Thomas Quirk demand of the said Sayers a title to 1200 acres of land that the said Sayers had sold to the said Quirk on north Elkhorn; said Sayers replied that the said Quirk had bought the said land of him and paid him, the said Sayers, honestly for it, but that the said Quirk had mortgaged the said land to a certain Andrew Kincannon for £102; that whenever the said Quirk should pay the said sum of £102 to the said Andrew Kincannon, that the said Sayers was ready and willing to make a title at any time to the said Quirk. And further this deponent saith not.

J. ROBERTS.

The deposition of John Smith, who being duly sworn, deposeth and saith, that several years ago he was informed by Capt. Daniel Weisiger and Baker Ewing that Robert Sayers, one of the defendants, had been in the town of Frankfort, and had agreed to make a title to a tract of land lying on Elkhorn, of about 1200 acres, which he, the said Sayers, had sold to Quirk, on him, Quirk, paying to the said Sayers £100 or £120, which the other defendant, Kincannon, had paid for Quirk as his security, and for which he had encumbered the land to him. That some time after, Quirk requested this deponent to go with to a Mr. Joseph Fenwick's, to whom he was about to sell a part of the land, and to state to him what he knew of the title of the land, and to assist him in making the contract; that this deponent went and stated to Fenwick and others what he had heard Weisiger and Ewing say on the subject; in consequence of which, he believes, they became purchasers, and did execute to this deponent a bond, as well as he remembers, for about £120, to be paid by him, when received, either to Kincannon or Sayers, on the receipt of the title to Quirk; that some time afterwards Sayers and Kincannon came in company to Frankfort, where this deponent met with them and stated the transaction, and informed them that he would go out and get the money and settle with them the amount of their demand against Quirk; that they positively refused to make the title or receive the money. Kincannon suggested that it was an unconditional sale made by Quirk; this deponent then observed that he considered it his duty to make

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a tender of the amount of the debt due by Quirk to them; that Sayers observed that he might save himself the trouble on that subject; that he should at all times be willing to admit the tender, or that he would take no advantage on that subject.

JOHN SMITH.

The deposition of William Love, who being duly sworn, deposeth and saith, that he was sheriff of Wythe county when there was a judgment obtained against Andrew Kincannon as bail for Thomas Quirk, at the suit of Baker's heirs, &c., and since that the said Quirk told this deponent that he had sold a certain tract of land he, the said Quirk, had purchased of Robert Sayers, lying in Kentucky, to Andrew Kincannon, who was to pay a certain Joshua Jones a debt that the said Jones was security for said Quirk; and further saith, that the said Quirk had sold the said land to said Kincannon in order to satisfy said Kincannon for said debt he had paid to the estate of Baker, deceased. And further saith not.

WILLIAM LOVE.

Personally appeared before me, William Hawkins, and made oath that in the year 1794, as well as he recollects, in conversation with a Mr. Andrew Kincannon, then in the State of Kentucky, of and concerning the land now in controversy between Thomas Quirk and said Kincannon, he understood from the said Kincannon that he would have no objection to take the money with the interest thereon due from said Quirk to him, were it not that Sayers would thereby be greatly injured, he having received but a small consideration for the said land; the land had now become of greater value, and some of it would likely be lost, and thereby it would ruin poor Sayers. And further this deponent saith, that from the conversation of said Kincannon, he was led to understand that Sayers was connected with the said Kincannon as to their interest in the said land. This deponent further understood from the said Kincannon that he ever did only expect to receive from Quirk the money, with the interest due thereon, and would not have contended for the land were it not to promote the interest of the said Sayers.

Personally appeared before me, a justice of the peace for the county of Franklin, William Hawkins, and made oath that this affidavit is true. Given under my hand, this 2d day of November, 1801.

JOHN M. SCOTT.

Let no grant issue to Robert Sayers, heir at law of Alexander Sayers, for 2,000 acres of land in Fayette county, on the main branch of Elkhorn, by virtue of a military warrant, because the same is surveyed on a vague entry, and contrary to the location thereof, for which reasons William Marshal claims all that part of the said Robert Sayers's survey as interferes with his entries and survey of 1,220 acres, made on a Treasury warrant, entered 16th September, 1785.

A copy. Teste, SAMUEL McCRAW, *C. L. O.*

A copy. Teste, ACHILLES SNEED, *D. C. C. A.*

STATE OF KENTUCKY, sct.

I hereby certify, that no summons was ever issued on the above caveat, nor that the same was ever prosecuted farther than the entering the same. Given under my hand, this 30th day of October, 1801.

A. SNEED, *D. C. C. A.*

STATE OF KENTUCKY, *Franklin circuit*, sct.

I, Francis P. Blair, clerk of the court aforesaid, do hereby certify, that the foregoing twenty-six pages contain a true and complete transcript of the and proceedings had in the suit therein mentioned. In testimony whereof, I have hereunto set my hand, on the 19th day of May, 1821, and in the 29th year of the Commonwealth.

F. P. BLAIR, *Clerk*,
By Robert I. Waggoner, D. C. F. C. C.

And afterwards, to wit, at the November term of the court aforesaid, in the year last aforesaid, came the defendants, Church's heirs, by their counsel, and filed a demurrer to the complainant's amended and supplemental bill; which demurrer follows in these words and figures, to wit:

The demurrer of Robert Church, William Church, Henderson Church, heirs at law of Robert Church, deceased, to the supplemental and amended bill filed against them by Andrew Kincannon in the circuit court of the United States for the seventh circuit. These defendants not admitting but protesting against any supposed or implied admission of any of the matters in the complainant's said bill contained, say that the said bill, and the allegations therein contained, are not sufficient in equity to entitle him, the said complainant, to sue or implead these defendants in this honorable court, nor are these defendants bound, by the principles of equity or the rules of the court of chancery, to give any other or further response thereto, because there is nothing in the said supplemental and amended bill contained or set forth, sufficient, agreeably to the principles and usage of the courts of chancery, to dispense with the necessary and essential parties in the investigation of the complainant's claim in equity, independent of his deed to any part of the claim of Sayers in the bill mentioned, because the record of the proceedings and adjudications of the Franklin circuit court, in which no final decree was pronounced, and which was finally abated, is in no way whatever binding or conclusive of the rights and interest of these defendants involved in this controversy. These defendants having been neither parties, or privy, or in any other manner to said suit or the proceedings therein, because, from the complainant's own shewing, the judicial tribunals of the Commonwealth, and not this honorable court, have full and complete jurisdiction to investigate the complainant's pretended equitable title to the land alleged to be claimed by him under the said Sayers in this suit.

TALBOT & HARDIN, *for defts.*

And the complainant saith his said bill, and the matters thereof, are good and sufficient in law, and this he is ready to verify; and for that the defendant hath not made any sufficient answer, the complainant prays the matters of his bill may be decreed upon according to the rules in chancery, &c.

BIBB, *for complainant.*

And afterwards, to wit, at a subsequent day of the term last aforesaid, in the year last aforesaid, came on to be heard the demurrer of Church's heirs to the complainant's amended and supplemental bill, but the court not being sufficiently advised of and concerning the premises, took time, &c.

And afterwards, to wit, at a subsequent day of the term last aforesaid, in the year last aforesaid, the following interlocutory decree was entered herein, to wit:

In this cause the bill alleges that, on the 29th day of April, 1780, Robert Sayers made an entry with the proper county surveyor for 2,000 acres, "on

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the north side of Elkhorn, joining the land surveyed for Bartholomew Dandridge on the northeast side, and running up the creek for quantity." That said entry is special and valid, being made pursuant to the requisitions of the law; that it was properly surveyed, and that a grant thereupon issued to the said Sayers on the 26th day of March, 1795, and that said Robert Sayers, by deed, bearing date the 24th day of June, 1795, conveyed 1200 acres thereof to the complainant. And the bill then charges that the defendants have possessed themselves of the land, holding or pretending under certain elder grants, issued upon illegal surveys, made under color of vague and junior entries. The defendant Robert Church, by his answer, controverts the specialty and validity of Sayers's entry; alleged that he was entitled, under a grant issued to him for 2,497 acres, dated the 25th day of December, 1785; that he had settled upon the land in the year 1789, and had continued in possession ever since. And Robert Church having died pending this suit, it has been revived against his heirs, who, in their answer to the bill of revivor, by way of amendment and supplement to the answer of their ancestor, repeat that their ancestor was in adverse possession of the land in controversy, holding and claiming the same under the grant to Robert Church, prior to the date of the deed from Sayers to the complainant, and insist that by the laws then in force prohibiting champerty and maintenance, and the buying and selling of pretenced titles, the deed is void, and passed no title to Kincannon. The other defendants who have answered, claim under a grant issued to Owings for 1,000 acres, of elder date than the grant to Sayers, and rests their defence upon the alleged vagueness of Sayers's entry and illegality of his survey. It is a principle equally applicable to courts of law and chancery, that the plaintiff must recover upon the strength of his own claim, or in other words that he must first establish his own title before he is authorized to object to the weakness of his adversary's; under the influence of this principle, it will first be necessary to investigate the complainant's title.

Bartholomew Dandridge's survey called for in Sayers's entry, made by virtue of a military warrant in the year 1774, and is proven to have been generally known prior to the date of Sayers's entry, Elkhorn is also proven to have been notorious by that name, so that it is believed there could have been little difficulty in finding the survey called for in it, must be regarded as a good object of description, and be taken. Dandridge's survey lies on the southwestern side of Elkhorn, and binding thereon, and Sayers's entry calls to adjoin Dandridge's survey on the northeast side, and running up the creek for quantity; it is therefore plain that Sayers's entry should be surveyed by begining at Dandridge's lower corner, on Elkhorn, running thence up the creek, with the meanders thereof, to Dandridge's upper corner, on the creek, and passing the corner if necessary, and continuing up the creek so far as that, when reduced to a straight line, will be equal to one side of a square of 2,000 acres as a base, and thence extending lines from each end thereof, off at right angles, to the general course of so much of the creek as constitutes that line so far that a line parallel thereto will include the quantity.

As the defendants have not attempted to establish the entries under which they claim the land in controversy, the claim of Sayers, and of Kincannon deriving title under him, is superior to the claim of the defendants as to all the land included within Sayers's original survey and deed filed from him to Kincannon, and which will also be included within the

survey, as above directed, except so far as the defendants may have interposed some other sufficient bar to the complainant's right to recover.

But the defendants, the heirs of Robert Church, as already noticed, allege that the deed from Sayers to Kincannon is void and passes no title, because their ancestor was in adverse possession of the land at the date of the deed; this defence is clearly supported in point of fact, and it is apprehended in point of law too, as the case stood at that time, according to the principles of the common law then in force prohibiting champerty and maintenance, and the statutes prohibiting the buying and selling of pretenced titles, a grant or conveyance of land of which another had an adverse seizen or possession, passes no title to the grantee, and was held to be so utterly void that the grantor or his heirs could, notwithstanding the grant, maintain any action, real or mixed, against a stranger for the recovery of the seizen or possession of the land. (See Kerchival vs. Triplett's heirs, 1st Marshall, 493.) But it is insisted for the complainant, that admitting the deed to be void in law, it should be regarded as good in equity, upon the ground of the consideration paid by the grantee to the grantor. This doctrine is very difficult to maintain; both the common law and the statutes regarded the buying and selling pretenced titles as a criminal offence, which at common law was indictable; every act binding title for land of which another had adverse seizen or possession, was, as the common law and statutes then stood, regarded as a pretenced title. For the chancellor to have held that the bargain and sale of such a title was good in equity against the adverse possession, could be regarded in no other light than an attempt to repeal or contemn the law. It is true that in transactions authorized by law, and by it regarded as moral and meritorious, the chancellor would lay hold of the substance without technically adhering to the legal ceremonies required by law, but that was done in equity to effect the thing which the law regarded as good, and intended to make effectual through the instrumentality of those ceremonies; but in no instance, it is believed, will chancery found its relief upon an illicit and prohibited transaction, in which both parties to it are equally culpable: in such cases equity follows the law. Regarding, then, the deed from Sayers to the complainant as utterly void, to all intents and purposes, so far as it attempts to convey the land within the limits of Robert Church's survey and patent, of which he had at the time a clear adverse possession, the inquiry is, can the complainant's amended and supplemental bill be sustained, by which he endeavors to avoid the effects of the doctrine laid down, by alleging that, independent of the deed and long antecedent to Church's adverse possession, the complainant was, in equity, entitled to the land by virtue of certain executory contracts between the patentee and Thomas Quirk and the complainant? Sayers, the patentee, and Quirk, are not before the court, and from the limitations imposed by the constitution and laws upon our jurisdiction, they cannot be brought before us as defendants; under these circumstances we cannot go into the inquiry whether the alleged executory contracts were or were not entered into as charged, nor whether they were or were not available in equity between the parties to them, without which it is impossible for the complainant to deduce any equitable right, under the patentee, to the land claimed by complainant against the heirs of Robert Church, nor can the court determine what would be the operation of the circumstances relied on if the parties were properly before the court. It is therefore the opinion of the court, that the demurrer to the supplemental and amended bill ought to be sustain-

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ed, and accordingly it is decreed and ordered, that the complainant's original, and supplemental, and amended bills, as against the heirs of Robert Church, deceased, be, and they are hereby dismissed, and that the defendants, the heirs of the said Robert Church, do recover against the complainant their costs in their defence herein expended.

The other defendants having wholly failed to establish their entry under which they claim, and there being nothing to prevent the operation of the deed from Sayers to Kincannon, so as to pass the title as to the land in controversy between the complainant and them, it is ordered and decreed, that the complainant do recover against them so much of the land in controversy as will be found to be included within Sayers's original survey as made, and his entry as directed to be surveyed, and also within the deed from Sayers to the complainant, but not within the lines of Robert Church's patent. And the surveyor of county is directed to go upon the lands in controversy, and survey and ascertain, by metes and bounds, the lands which the complainant is entitled to recover, according to the principles of the foregoing opinion and decree, and make report, &c.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1822, on motion of the complainant aforesaid, by his counsel, leave is given him to take depositions generally, in or out of this district, before any two justices of the peace, notary public, or mayor of any city, upon his giving to the defendants legal notice of the time and place of taking the same, subject however to objections as to competency.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1823, (until which time this cause was continued,) upon petition and affidavit filed, it is ordered, that the interlocutory decree entered upon herein at a former term be opened, and the hearing of the cause is set aside.

And afterwards, to wit, at a subsequent day of the term last aforesaid, in the year last aforesaid, ordered by the court, that either party have leave to take depositions generally, in or out of this district, before any two justices of the peace, notary public, or mayor of any city, upon giving to the adverse party legal notice of the time and place of taking the same.

And afterwards, to wit, at the November term of the court aforesaid, in the year last aforesaid, on motion of the complainant's counsel, leave is given either party to take depositions generally in this cause.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1824, on motion of the parties herein, by their counsel, it is ordered, that either party have leave to take depositions generally, in or out of this district, before any two justices of the peace, notary public, or mayor of any city, upon giving to the adverse party legal notice of the time and place of taking the same.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1825, (until which time this cause was continued,) on motion of the defendants Presley Nealle, Milton Stapp, William Branham, and John Leach, leave is given them to file their amended answer herein, which is done accordingly.

And the complainant says that the allegations of said amended answer, so far as they contradict the allegations of his bill, are untrue, and, by consent, stands for trial at next term; which amended answer is in the words and figures following, to wit:

The amendments to the answers of Presley Neall, Milton Stapp, William Branham, and John Leach, to the original answers filed by them to the bill

exhibited against them by Andrew Kincannon. These defendants, in addition and explanation of their said original answers, state that they have been informed, believe, and therefore charge, that Robert Church, Sen., since deceased, was at the time of the execution of the deed from Robert Sayers to the complainant, by his tenant, Robert Church, jr., in the adverse possession of the land included in the survey and patent of him, the said Church, for acres, within the limits of which said patent the land held by your respondents, although derived to them by purchases under the claim of Owings are respectively situated; they are advised by counsel and do insist, that as to these defendants, the said conveyance, purporting to have been executed by him, the said Sayers, to the complainant, by the operation of the laws against champerty and maintenance, is entirely invalid and void.

TALBOT, *for defts.*

And afterwards, to wit, at the November term of the court aforesaid, in the year last aforesaid, came the complainant's counsel and submitted this cause to the court, but the court not being advised of and concerning the premises, took time, &c.

And afterwards, to wit, at a subsequent day of the term last aforesaid, in the year last aforesaid, came the parties, by their attorneys, and on motion of the complainant, this suit is dismissed as to Alexander Macey, John Oliver, jr., and Erasmus Jones, and the bill having been dismissed at a former term as to Church's heirs, the cause was now finally heard as to the other defendants.

The court, at the former hearing of this cause, having considered the entry of Sayers, under which the complainant claims, was then of opinion, and yet is, that said entry is valid, and in the interlocutory then pronounced directed the manner in which it ought to have been surveyed, with which the court is still satisfied. The court was then, and still is of opinion, that the entry, by virtue of which the patent for 1,000 acres issued to Richard Owings, under which the defendant Thomas D. Owings, and others now before the court, claim title, is invalid. It now remains to be considered upon the proofs let into the cause since opening the interlocutory, whether the deed from Sayers to Kincannon, bearing date the 24th day of June, 1795, is void and inoperative by force of the laws then in force concerning champerty and maintenance, and the statutes against selling pretenced titles, on the ground alleged by the defendants of there being at that time an adverse possession of the premises. The adverse possession relied upon is, first, that of Robert Church, Sen., and his son Robert, as his tenant; they were settled within the patent limits of Church's claim, which covered the greater part of the land now in controversy, but without the boundary of Owings's patent, which also covered the ground. Owings's patent is elder than Church's; it is well settled in Kentucky, that under such circumstances Church's possession did not extend either actually or constructively within Owings's elder grant; it follows that Church's possession, outside of Owings's survey, could not operate so as to defeat the operation of the deed from Sayers to Kincannon for so much of the land contained in the deed as was covered by Owings's, which is the land in controversy. The proof conduces to shew that others however were, at the date of the deed, in possession of the whole or the greater part of the land in controversy within Owings's patent, but it is not shewn that they claimed or held under that

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title. Before a deed can be avoided on the ground of its being made contrary to the law concerning champerty and maintenance, it must not only be shewn that at its execution there was an actual possession of the premises, but it must be satisfactorily proven that the possession was adverse to the title of the alienor. The proofs in this cause conduce strongly to shew, on the contrary, that the persons then in possession claimed and held, in some way not explained, under Quirk, who claimed under Sayers, and through and under whom Kincannon purchased; so far as the court can see, the possession was not hostile, but in amity and consistent with the title of Sayers. It is the opinion of the court that the from Sayers was valid and operative, so as to pass his title and interest in so much of the land as was included within Owings's elder patent, and that the complainant is, in equity, entitled to recover all the land in controversy covered by Sayers's entry, when laid down as formerly directed, in common with Sayers's original survey, and which has been accordingly laid down and represented on the surveyor's plat and report, made and returned under the former interlocutory decree.

But it appearing to the court that the defendants have, in good faith, and relying upon their legal title, made valuable improvements upon the premises, it seems to the court that a court of equity ought not, on behalf of the complainant, who asks equity, to strip the defendants of their legal title, and compel them to surrender the possession without requiring the complainant to do equity, by making to the defendants some compensation for the valuable improvements made by them. It is probable that some of the tenements were originally made and improved, not under Owings's title, but under Quirk, who claimed under Sayers. Kincannon, himself, having derived his claim by purchase through Quirk, and that Owings, at some subsequent time, by actions of ejectment or otherwise, obtained the possession, which may vary the measure of rents and of compensation for improvements, from what would be the rule of right if the possession had been at first taken under Owings, and the improvements made wholly by him, or his tenants, or alienees.

Wherefore it is decreed and ordered, that the complainant do recover against the defendants Thomas Deye Owings, James M. Blakey, Ralph Phillips, Milton Stapp, John L. Head, and Charles Buck, and that said defendants do, on or before the first day of March next, by deed, with warranty against themselves and their heirs, convey and release unto the complainant all their right, title, and interest, in and to the land represented on and designated on the connected plat, returned under the interlocutory decree formerly made herein, by 1. T. 2. ⊙. being the interference between Owings's patent and the entry of Sayers as decreed, and the patent of said Sayers and his deed to Kincannon, and bounded as follows: Beginning at a white oak and dogwood on Sayers's original line; thence with Owings's original line N. 2° W., 200 poles, to Owings's original corner, a black ash, sugar tree, and hickory stump, and with another of Owings's line of the patent N. 88° W., 410 poles, with said Kincannon's line, S. 72° E., 60 poles, to his original corner, now down, but marked in its place a hackberry and pawpaw, with Kincannon's line S. 18° W., 204 poles, crossing the north fork of Elkhorn, in all 314 poles, to two poplar stumps on the bank of the north fork of Elkhorn, original corner to Kincannon on Sayers's patent line, and with the same to the beginning, containing, by estimation, 625 acres, be the same more or less. And it is further ordered and decreed,

that the said defendants do, on or before the first day of March next, yield up the possession of said land to the complainant; and as to the other defendants, Benjamin Head, John Leach, Presley Neall, Bunnion McAndrews, James Wilson, Benjamin Cox, William Cox, and James Briscoe, it is decreed and ordered, that they do, on or before the first day of March next, release and convey to the complainant, by deed, with warranty against themselves and their heirs, all their right, title, and interest, in and to the land falling within the entry of said Sayers as decreed, and within said Sayers's patent and his deed to Kincannon, and represented upon the surveyor's plat, returned herein under the interlocutory decree formerly made herein, by the dotted lines, and figures, and letters, 7, 11, 2, C, 2, (red,) T. 2. ⊙. 8. and Elkhorn. And it is further decreed and ordered, that the defendants do yield up to the complainant possession of the premises recovered by this decree on or before the said first day of March next. And it is further decreed and ordered, that the said defendants, as to whom this cause is now heard, do pay to the complainant his costs in this suit expended.

And at the instance of the defendants' counsel, it is further ordered, that John Morris, Cornelius Fenwick, Nathaniel Richardson, William French, and John Price, be, and they are hereby, appointed commissioners herein, who, or any three of them, being first duly sworn before some justice of the peace to act impartially between the parties, shall go upon the lands recovered by the complainant, reasonable notice of the time and place of their meeting being first given to the parties, their agent, or attorney at law, and make and report an account of the rents and profits, together with waste, if any, and of the lasting and valuable improvements upon the premises; and the said commissioners are instructed and required to inquire, and specially report, at what time the improvements were made upon each tenement respectively, by whom made, and under what claim or title, and for that purpose to call upon and examine witnesses, upon oath to be administered; said commissioners are also instructed to report the value of the rents annually upon each tenement, from the time of the institution of this suit, and to report specially the improvements made by Thomas Deye Owings, his tenants, or alienees, since he or they under him obtained possession; to distinguish and report specially, what proportion, if any, of such improvements were made since the institution of this suit; and further to report specially any matter touching the possession, rents, profits, and improvements, waste and damage which may appear before them, and be required to be reported specially, and make report, &c., to enable this court to decree finally between the parties as to the rents, profits, improvements, &c.

EXHIBITS, to wit:

Surveyed for Bartholomew Dandridge, assignee of Turner Southall, by virtue of the Governor's warrant, 2,000 acres of land in Fincastle county, on Elkhorn creek, a north branch of the Kentucky river, lying about 70 miles from the Ohio, and on the south side thereof, beginning * at three double sugar trees on the south bank of the creek, by a large buffalo ford, 360 poles above Cove run; and running thence S. 50° W., 460 poles, to two poplars by a draft and meadow at the foot of a hill; and along the same N. 65° W., 320 poles, to a white oak, hickory, and walnut, by the side of a

* For plat, see original

falt ridge; N. 180 poles, to a honey locust, ash, and elm; N. 40° W., 186 poles, to a walnut, black oak, and poplar; N. 50° E., 160 poles, crossing a branch to two hickories and a Spanish oak on a hill side; S. 70° E., 80 poles, to a walnut, hoopwood, and white oak; N. 50° E., 104 poles, to a white oak and two sugar trees at the foot of a hill; and along the same S. 32° W., 68 poles, to a walnut; N. 48 poles, to a sugar tree and white oak; N. 20° E., 46 poles, to an ash and hickory; N. 50° E., 28 poles, to a Spanish oak and honey locust; N. 70° E., 130 poles, to a hickory and elm; E. 40 poles, to a honey locust and sugar tree; and crossing the ridge S. 73° E., 410 poles, to an ash and three sugar trees on the bank of the creek, by a small gully, at the lower end of an island, and opposite a high hill, and runneth up the several courses of the creek, and binding thereon, 734 poles, to the beginning. June 27, 1774. No variation.

JOHN FLOYD, *Assistant*,
Wm. Preston, S. F. C.

A copy. Teste,

THOMAS S. PAGE, *D. R.*
For John M. Foster, R. L. O.

This indenture, made this fifth day of February, one thousand eight hundred and sixteen, between James M. Blakey and Ann Blakey his wife, of the county of Franklin, and State of Kentucky, of the one part, and Ralph Phillips, of the county of Hunterdon, and State of New Jersey, of the other part, witnesseth, that said James Blakey and his said wife, in consideration of the sum of sixteen hundred and twelve dollars and fifty cents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, and confirmed, and by these presents doth grant, bargain, sell, alien, and confirm, to the said Ralph Phillips, a tract of land, lying in the county of Franklin, on the waters of Elkhorn, being part of a tract of 245½ acres granted by Thomas Deye Owings to said James and William Blakey, by deed, recorded in the office of Franklin county court, and that part which, on a division between said James and William, was allotted to said James, as will appear by a deed from said William to said James, recorded in said office, and bounded as follows, to wit: Beginning at a white oak, hickory, and two ironwoods, on the clift of Elkhorn, (the original beginning to the said 245½ acres tract, which this forms part of,) and running N. 17° E., 110 poles, to a hickory and buckeye by the side of a branch, on the north side thereof; thence W. 106 poles, to an ash and mulberry, northeast corner to Robert Branham's 66 acre tract; thence with his line S. 262 poles, to a dogwood and white oak in the original line of Richard Owings's patent line; thence E. 56 poles, to a hickory on the bank of north Elkhorn, in the original patent line, also in Andrew Steele's pre-emption line; thence up Elkhorn N. 23° W., 12 poles; thence N. 36° W., 10 poles; thence N. 12° W., 20 poles, to two sugar trees and a redbud; thence N. 60° W., 20 poles; thence N. 6° E., 46 poles; thence N. 20° E., 28 poles, to a red oak on the clift of Elkhorn; thence a straight line to the beginning, containing, by survey, 107½ acres, be the same more or less, with its appurtenances; to have and to hold the same to the said Ralph Phillips, and his heirs for ever, to his only proper use and behoof. And the said James M. Blakey, for himself and his heirs, &c., covenants with said Ralph, and his heirs and assigns, that he, said James, and his heirs, will for ever warrant and defend the said land against himself and his heirs, and all

claiming under them. And further, that if said land is lost by any other claim, that he, said James, will repay to said Ralph the consideration money herein expressed without interest; but it is understood that said Ralph will take a transfer of the said James's recourse upon Thomas D. Owings, being $663, as so much of the refunding money in case the land is lost, and the balance of $949 50 is to be paid by said James Blakey. The said Blakey is to stand accountable to Phillips for the sum he may transfer on Owings, if the same is not recovered of Owings on due diligence being used. In testimony whereof, the said Blakey and wife have hereunto set their hands and seals the date first above written.

JAMES M. BLAKEY, [SEAL.]
her
ANN + BLAKEY, [SEAL.]
mark

Signed, sealed, and acknowledged in presence of
GEORGE HITE,
BEVERLY K. BLAKEY.

We, Henry F. Hume and William Clarke, do hereby bind ourselves, our heirs, &c., as securities for James M. Blakey, that he, his heirs, &c., shall well and truly abide by and perform the covenants in the foregoing deed contained. Witness our hands and seals, this 5th day of February, 1816.

HENRY F. HUME, [SEAL.]
WILLIAM CLARK, [SEAL.]

Teste, GEORGE HITE,
BEVERLY K. BLAKEY

FRANKLIN COUNTY, *clerk's office*, sct.

I, Willis A. Lee, clerk of the county court for the county aforesaid, do certify, that this deed was produced to me in my office on the 20th February, 1816, and was acknowledged by James M. Blakey and Ann Blakey his wife, to be their act and deed; and the said Ann being by me examined separate and apart from her husband, as the law directs, did freely and voluntarily relinquish her right of dower in and to the premises, without the threats or persuasions of her said husband, and was willing the same might be recorded as such. And afterwards, on the 23d day of the same month, and year aforesaid, the securityship of Henry F. Hume and William Clarke was proven by the oath of George Hite to be the act and deed of said Hume and Clarke, and the same is truly recorded in my said office.

WILLIS A. LEE.

DEPOSITIONS, to wit:

Martha Patterson and others, complainants, vs. Thomas D. Owings and others. March the 17*th*, 1814. *In chancery in the Franklin circuit court.*

Met at the house of John Bacon, agreeably to the agreement of the parties, both parties being present, proceeded to take the deposition of Charles Lecompte. This deponent being first sworn, saith:

Question by the complainant. Please to tell what you know respecting the notoriety of Bartholomew Dandridge's military survey of 2,000 acres on Elkhorn creek, as early or prior to the year 1780?

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Answer. In the year 1775, I, in company with others, went from the mouth of Elkhorn in our canoes up to forks of said creek, where we landed and proceeded out not far below the forks; some of the parties discovered a line which seemed not to be long marked. In '76 we returned and discovered more lines in the same neighborhood, which made us somewhat particular how we made our improvements. In the year 1779, when we again returned, we learnt that those lines were Dandridge's and Stephens's surveys, so that those who had made improvements readily gave up that they would get no land, it being covered by those military claims, and that Dandridge's survey was generally known, at the last date mentioned, by all those who were any way acquainted in this part.

Question by the defendants. Had you any knowledge, at the time above mentioned, of the corners of Dandridge and main Elkhorn?

Answer. I was not acquainted with any of the corners, but from the marked lines that I understood to be Dandridge's, I think I could have found the corners.

Question by same. Have you been generally acquainted with the Elkhorn waters ever since the above mentioned time?

Answer. I have.

Question by same. Was not there a number of buffalo roads that crossed the said Elkhorn?

Answer. There was.

Question by same. Did you ever have any knowledge of the buffalo road that crosses Elkhorn where Dandridge's beginning is on Elkhorn?

Answer. I might have been acquainted with the road, no doubt, but do not know where Dandridge's beginning was. And further this deponent saith not.

CHARLES LECOMPTE.

The foregoing deposition was subscribed and sworn to before me, a justice of the peace for Franklin county, this 7th day of March, 1814.

CLEM. BELL.

Martha Patterson and others vs. Thomas D. Owings. In chancery in the Franklin circuit court.

By consent of both parties the deposition of John Williams, of lawful age, of Woodford county, State of Kentucky, was taken in the town of Frankfort. The deponent being sworn, saith:

Question by the defendant. What time did you first become acquainted with the place now called Leestown, on the Kentucky river?

Answer. Some time in the summer 1775.

Question by same. At what time did you become acquainted with Elkhorn, from the forks to the mouth thereof?

Answer. I became acquainted with the forks of Elkhorn in the spring of the year 1776, and as far below the mouth as Fitzgerald's cabins.

Question by same. At what time were you appointed deputy surveyor for Fayette county?

Answer. I think about November, in the year 1782.

Question by same. At what time did you become acquainted with the military survey of Bartholomew Dandridge, lying between the forks and mouth of Elkhorn?

Answer. I dont recollect at what time, but I think not until after the year 1784.

Question by same. Were you not at the marshal's office shortly after it was opened?

Answer. I was there frequently making entries and returning surveys.

Question by same. You say that you were acquainted with Leestown in the year 1775? at what time did you leave the country and return again to it?

Answer. I left it again in the fall 1776, and returned again in the 1778 with Gen. Clarke, and in the fall 1779 I settled at Lexington, and from there I moved to Woodford county, where I now live.

Question by the plaintiff. What distance was Fitzgerald's cabins below the forks of Elkhorn?

Answer. I think about one mile.

Question by same. Were you not acquainted below Fitzgerald's cabins until the year 1783?

Answer. I dont think I was well acquainted below that place. And further this deponent saith not.

JOHN WILLIAMS.

FRANKLIN COUNTY, sct.

The above deposition was subscribed and sworn to before me, a justice of the peace in and for the county aforesaid, this 25th day of May, 1815, as witness

J. J. MARSHALL, *J. P.*

A copy. Teste, F. P. BLAIR, *C. F. C. C.*

Kincannon vs. Owings, &c.

At the request of the defendants I agree that this deposition be read as evidence as if taken in this cause. May 10th, 1821.

BIBB, *attorney for compl't.*

William Hayden being sworn, saith:

Question by the complainants. Please to tell what you know respecting Bartholomew Dandridge's military survey of 2,000 acres of land as far back as the year 1780, or prior to that date?

Answer. From the information of Willis Lee, Joseph Lindsey, William Lindsey, Andrew Steele, Alexander McConnell, William McConnell, John Williams, and others, I am induced to believe that it was a survey of notoriety, and generally so called as such by those men in my presence, and I know it to be so called during the years 1776 and 1779, 1780 and 1781.

Question by defendant. At what time did you become acquainted with the woods from the forks of Elkhorn to the mouth thereof?

Answer. In the year 1776.

Question by same. Was there not more buffalo roads crossing said creek in that part than one?

Answer. I do not recollect of but the one.

Question by the same. Do you know of any creek or run in said bounds on main Elkhorn that went by the name of Cove run?

Answer. There might have been, but I do not recollect only one by that name, which empties into Kentucky river just below Leestown.

Question by same. Do you not know that there has been settlements and pre-emptions laid in Dandridge's or Stephens's military survey, (which join each other,) by Andrew McConnell and Bartlett Fitzgerald since those military surveys were made?

Answer. I am induced to believe they did make improvements, because I saw them at work on them.

Question by the complainant. Did you know of a branch called for in the survey 360 poles below the buffalo ford in the survey, and empties into the creek?

Answer. I know of one that runs from the ponds about half a mile off the creek.

Question by defendant. At what time did you become acquainted with any of the lines and corners of B. Dandridge's survey on main Elkhorn?

Answer. I never was acquainted with any of them, saw them, nor I never was shewn them by any one, to the best of my recollection.

Question by the complainant. Did you not know B. Dandridge's military survey from information, as before said, and did not hunters and others always avoid making improvements on said survey?

Answer. I was in company with Lee and others, and they always directed me to avoid making improvements on Dandridge's military survey.

Question by defendant. Was not the woods in and about where you understood B. Dandridge's survey was, very thick with undergrowth, so that it would have been difficult for a stranger to have went from Leestown to any given point on main Elkhorn?

Answer. The woods was very thick, but any stranger who was acquainted with travelling through woods might have found a given point.

Question by same. Was there not more ponds in the neighborhood of where you understood B. Dandridge's survey to be made than one?

Answer. There was two. And further this deponent saith not.

WILLIAM HAYDEN.

Subscribed and sworn to, this day and year before written, before me,
ROBERT PLUMMER, *J. P. G. C. Ky.*

Received of the plaintiff of the within suit one dollar as a fee for taking the said deposition.

ROBERT PLUMMER, *J. P. G. C.*

A copy. Attest, F. P. BLAIR, *Clerk.*

Endorsed.—This copy of a deposition will be objected to on the hearing as inadmissible. It is but a copy: it is not taken in this suit, nor does it appear in what cause it was taken.

HARDIN, *for Owings.*

The deposition of Charles Lecompte, taken at his own house in Henry county, on the 21st day of April, 1820, to be read as evidence in a suit in chancery in the circuit court of the United States, Kentucky district, wherein Andrew Kincannon is complainant, and Thomas D. Owings, Benjamin Head, Erasmus Jones, Robert Church, Thomas Church, William Church, Henderson Church, and others, are defendants, being sworn, saith:

Question by complainant. Was the stream now called Elkhorn generally known and called by that name in 1776, and ever since?

Answer. In 1775 I went from the mouth of Elkhorn in company with others in canoes to the forks, and knew it by that name, and have never heard it called by any other name ever since.

Question by complainant. Were you acquainted with the military survey of Bartholomew Dandridge below the forks of Elkhorn, and at what time did you first become acquainted with it?

Answer. In the year 1775 and '76, in company with about eighteen or nineteen, looking for land to make improvements upon, we discovered the lines which was said to be B. Dandridge's military survey below the forks of Elkhorn, and on the waters of Elkhorn.

Question by the same. Was the body of that survey generally known as early as the month of April, 1780?

Answer. Yes, by all the adventurers several years before that time.

Question by the same. From information of others, and conversation with the early settlers and locators, was Bartholomew Dandridge's military survey on Elkhorn generally known and talked of as early as April, 1780?

Answer. Yes. And further this deponent saith not.

CHARLES LECOMPTE.

HENRY COUNTY, sct.

The above deposition of Charles Lecompte was sworn and subscribed to before me, a justice of the peace in and for Henry county, at his own house, this 21st day of April, 1820. Given under my hand, this day and date above.

LAWRENCE GOODWIN, *J. P. H. C.*

The deposition of John Bradford, taken at his own house, in the town of Lexington, Fayette county, to be read in evidence in a suit in chancery in the circuit court of the United States, seventh circuit, Kentucky district, wherein Andrew Kincannon is complainant, against Thomas D. Owings, Benjamin Head, Erasmus Jones, Robert Church, Thomas Church, William Church, Henderson Church, and others, defendants, being sworn, deposeth and saith:

Question by complainant. Was the stream now called Elkhorn known and generally called by that name in 1776 and ever since?

Answer. I never became acquainted with Elkhorn until 1779, since which, to the present moment, it has gone by that name.

Question by the same. Were you acquainted with the military survey of Bartholomew Dandridge below the forks of Elkhorn? and about what time did you first become acquainted with it?

Answer. I never was acquainted with it otherwise than by report and from official copies of the military surveys which were furnished the commissioners who were appointed to adjust the claims of settlers in Kentucky; I had access to those copies about the latter end of December, 1779, or beginning of January, 1780, at which time I made a plat of the military surveys on Elkhorn, from those copies, amongst which was that of Bartholomew Dandridge.

Question by the same. Was the body of that survey generally known as early as the month of April, 1780?

Answer. I do not know.

Question by the same. From information of others, and conversation with the early settlers and locators, was Bartholomew Dandridge's military survey of 2,000 acres on Elkhorn generally known and talked of?

Answer. Amongst early settlers I have frequently heard Bartholomew Dandridge's survey on Elkhorn named, and believe that it was known to the chain carriers, markers, and hunters, who attended Floyd, Taylor, and Douglass, who were surveyors in 1774, 5, and 6. And further this deponent saith not.

JOHN BRADFORD.

FAYETTE COUNTY, sct.

The foregoing deposition of John Bradford was sworn and subscribed to before me, a justice of the peace in and for Fayette county, at his house, in the town of Lexington, and county of Fayette, this tenth day of April, eighteen hundred and twenty.

JOHN PARKER, *J. P. F. C.*

The deposition of John Kellar, taken at his own house, in Jessamine county, agreeably to notice, on the 13th day of April, 1820, to be read as evidence in a suit in chancery in the seventh circuit court of the United States, Kentucky district, wherein Andrew Kincannon is complainant, against Thomas D. Owings, Benjamin Head, Erasmus Jones, Robert Church, Thomas Church, and others, are defendants, being sworn, deposeth and saith:

Question by the complainant. Was the stream now called Elkhorn known and generally called by that name in 1776 and ever since?

Answer. I was at the mouth of it in the year 1776 in company with about twenty men; it was then called Elkhorn and ever since.

Question by the same. Were you acquainted with the military survey of Bartholomew Dandridge below the forks of Elkhorn? and at what time did you first become acquainted with it?

Answer. In the summer, 1776, in company with John Laffody and others I became acquainted with the body of the survey, but not with the lines.

Question by the same. Was the body of the survey generally known as early as the month of April, 1780?

Answer. I believe it was.

Question by same. From information of others, and conversation with the early settlers and locators, was B. Dandridge's military survey on Elkhorn generally known and talked of as early as April, 1780?

Answer. I believe it was. I was twice on it during that year myself, and heard it frequently spoken of. And further this deponent saith not.

JOHN KELLAR.

JESSAMINE COUNTY, sct.

The above deposition of John Kellar was sworn and subscribed to before me, a justice of the peace in and for Jessamine county, at his own house, on the 13th day of April, 1820. Given under my hand, this date above written.

SAMUEL H. CRAIG, *J. P. J. C.*

The deposition of Bennett Pemberton, taken in the town of Frankfort, at the house of Daniel Weisiger, on the 23d day of March, 1821, to be read as evidence in a suit in chancery depending in the Franklin circuit court between D. Hendley, complainant, and the heirs of Robert Church and others, *are* defendants, being of lawful age, and duly sworn, deposeth

and saith: That in the month of January or February, 1789, this deponent settled at the forks of Elkhorn, and some time in the spring of the year he discovered that some person was making a settlement at the place where Robert Church settled, and some time during the summer he found it was the Church's, but am not positive whether they raised corn there in that year, but am certain they did in the year 1790, and have continued there ever since. This deponent recollects that Robert Church, jr., settled on main Elkhorn, about one mile below where his father settled, in the spring of the year 1791, and that the heirs have held possession ever since. And further this deponent saith not.

BENNETT PEMBERTON.

Also the deposition of Richard Epperson, taken as above, being of lawful age, and duly sworn, deposeth and saith: That in the beginning of the year 1792 he moved down on main Elkhorn; being acquainted with old Mr. Church in Virginia, he went to see him, and found him on the place where he died on, on main Elkhorn. That early in the spring of the same year he was there at a logging, where the old gentleman intended planting his orchard, and that the improvement had the appearance of a crop having been made the year before. This deponent further states, that he knew of Robert Church, jr., being on main Elkhorn, about a mile below his father's, in the year 1793; in the spring of the year 1793 he was at the place of Robert Church, jr., and recollects riding through his field, and the cornstalks was then standing, and that the possession has been held ever since by the Church's. And further this deponent saith not.

RICHARD EPPERSON.

The above depositions of Bennett Pemberton and Richard Epperson was sworn and subscribed to before me, a justice of the peace in and for Franklin county. Given under my hand, this 23d day of March, 1821.

HUGH INNES, *J. P.*

A copy. Attest, ROB. J. WAGGINER, *D. C. F. C. C.*

I agree that these depositions shall be read as evidence in the suit in the court U. S. seventh circuit, Kentucky district, Kincannon vs. Church and others. April 26th, 1821.

GEO. M. BIBB, *attorney for compl'ts.*

This deposition, taken at the house of George Carlisle, in Woodford county, between the hours of ten and two, this 30th day of April, 1821, to be read as evidence in the circuit court of Franklin county, wherein David Henley is complainant, and Robert Church's heirs and others are defendants; also to be read in the circuit court in chancery of the United States wherein Andrew Kincannon is complainant, and the heirs of Robert Church and others are defendants; the proper notice herewith filed. This deponent being of sound mind and lawful age, deposeth and saith: That about the first day of March, one thousand seven hundred and ninety-two, Robert Church left my house, and I went with him from this place to the place he then settled on, on main Elkhorn, below the forks of Elkhorn, and below where his father then lived, on the same side of the creek, and that he, Church, has been in possession of the same place ever since, and still holds the same place yet. And this deponent further saith not.

GEORGE CARLISLE,
Signed by his directions.

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This deposition was taken before me, a justice of the peace in and for Woodford county, at the house of the deponent, in Woodford county, between the hours of ten and two, and subscribed in my presence, this 30th day of April, 1821.

E. H. BLACKBURN.

The deposition of Senaca McCracken, taken agreeably to notice at the court-house, in Frankfort, on the 30th day of March, 1820, to be read as evidence in a suit in chancery depending in the United States' court, 7th circuit, Kentucky district, wherein Andrew Kincannon is complainant, against Thomas D. Owings, Benjamin Head, Erasmus Jones, Robert Church, Thomas Church, William Church, Henderson Church, and others, are defendants, being first sworn, deposeth and saith:

Question by complainant. Was the stream now called Elkhorn known and generally called by that name in the year 1776 and ever since?

Answer. Yes.

Question by same. Were you acquainted with the military survey of Bartholomew Dandridge below the forks of Elkhorn? and at what time did you first become acquainted with it?

Answer. I think I heard it frequently spoken of, 1776.

Question by the same. Was the body of that survey generally known as early as the month of April, 1780?

Answer. From the information of my brother, Cyrus McCracken, in the year 1776, I am induced to believe it to be a survey of notoriety. We encamped in the bottom, where I now live, and I think it was at that time my brother informed me that Dandridge's survey was below, on main Elkhorn. And further this deponent saith not.

SENACA McCRACKEN.

FRANKLIN COUNTY, sct.

The within deposition of Senaca McCracken was sworn and subscribed to before me, a justice of the peace in and for Franklin county, at the court-house, in Frankfort. Given under my hand, this 30th day of March, 1820.

J. SWIGERT.

The deposition of Jacob Sodowsky, taken at the house of John Kellar, in Jessamine county, on the 13th day of April, 1820, agreeable to notice, to be read in evidence in a suit in chancery in the seventh circuit court of the United States, Kentucky district, wherein Andrew Kincannon is complainant, against Thomas D. Owings, Benjamin Head, Erasmus Jones, Robert Church, Thomas Church, and others, are defendants, being sworn, deposeth and saith:

Question by complainant. Was the stream now called Elkhorn known and generally called by that name in 1776 and ever since?

Answer. In June, 1774, I became acquainted with it by that name, and never heard it called by any other name than Elkhorn ever since.

Question by same. Were you acquainted with the military survey of Bartholomew Dandridge below the forks of Elkhorn? and at what time did you first become acquainted with it?

Answer. I carried one end of the chain in making the survey, that is, from the corner on Elkhorn to the two poplars, in the year 1774.

Question by same. Was the body of that survey generally known as early as the month of April, 1780?

Answer. I think it was, as the line from his upper corner, on Elkhorn, to the two poplars, was marked so plain, a man looking for surveys, going up or down the creek, could not have missed finding it. The reason it was so plainly, marked we had parted with Hancock Taylor on Harrod's creek and was to meet on Elkhorn.

Question by same. From information of others, and conversation with the early settlers and locators, was Bartholomew Dandridge's military survey on Elkhorn known and talked of as early as April, 1780?

Answer. Yes, it was, and I believe among the improvers before 1780.

Question by the same. If, from reputation, Abraham Hoptonstall is not dead?

Answer. I have heard that he was, and from information I believe he is. And further this deponent saith not.

JACOB SODOWSKY.

JESSAMINE COUNTY, sct.

The foregoing deposition of Jacob Sodowsky was sworn and subscribed to before me, a justice of the peace in and for Jessamine county, at the house of John Kellar, in said county, this 13th day of April, 1820. Given under my hand, &c.

SAMUEL H. CRAIG, *J. P. J. C.*

The deposition of Col. William Steele, taken at the house of Joseph B. White, in the town of Versailles, agreeable to notice, on the 3d day of April, 1820, to be read in evidence in a suit in chancery depending in the circuit court of the United States, seventh circuit, district of Kentucky, wherein Andrew Kincannon is complainant, against Thomas D. Owings, Benjamin Head, Erasmus Jones, Robert Church, and others, defendants, who being sworn, deposeth and saith:

Question by complainant. Was the stream now called Elkhorn known and generally called by that name in 1776 and ever since?

Answer. From the year 1781 I have known it, and from information of those in Kentucky and record, and have known it since the year 1774.

Question by same. Were you acquainted with the military survey of Bartholomew Dandridge below the forks of Elkhorn? and at what time did you first become acquainted with it?

Answer. About the 24th December, 1782, I had a location made in the name of my sisters on that part of Bart. Dandridge's survey of 2,000 acres, whereon Jacob Creath and John Morris now lives, of 1,000 acres, and some time afterwards made two locations of 400 acres each, in the name of John and William Steele, extending out southerly. When I was about making the surveys on the above entries, I found the lines of Dandridge, and without finishing the surveys I returned to Lexington, where I got a copy of the surveys of Bart. Dandridge and Adam Stephens of 2,000 acres each, and on going on the ground again I found the lines of the said two surveys; I then made no doubt but they were the same surveys of which I had got the copies; I then withdrew the whole of the entries I had made in that quarter and entered elsewhere.

Question by same. From information of others, and conversation with the early settlers and locators, was Bart. Dandridge's military survey on

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Elkhorn generally known and talked of as early as April, 1780?

Answer. Yes. And further this deponent saith not.

WILLIAM STEELE.

The deposition of John Mitchell, taken as above, deposeth and saith:

Question by the complainant. Was the stream now called Elkhorn known and generally called by that name in the year 1776 and ever since?

Answer. I came to Kentucky in the fall of the year 1779, and was a resident at Bryant's station until the fall 1784, and then moved to Glenn's creek in the said years above mentioned. I hunted up and down Elkhorn nearly to the mouth, and always heard it called main Elkhorn.

Question by the same. Were you acquainted with the military survey of Bart. Dandridge below the forks of main Elkhorn? and at what time did you first become acquainted with it?

Answer. I heard talk of it, but my recollection at this time dont serve me when or where.

Question by same. Was the body of that survey generally known as early as the month of April, 1780?

Answer. I think it was from the knowledge my recollection serves me.

Question by same. From information of others, and conversation with the early settlers and locators, was Dandridge's military survey on Elkhorn generally known and talked of as early as April, 1780?

Answer. John Nest and myself hunted frequently together; I recollect hearing him speak of military land, but do not recollect hearing him say who they belonged to at this time. Samuel Black frequently mentioned the military claims, but I do not recollect the names at this time. And further this deponent saith not.

JOHN MITCHELL.

WOODFORD COUNTY, sct.

The above depositions of William Steele and John Mitchell were sworn and subscribed to before me, a justice of the peace in and for Woodford county, at the house of Joseph B. White, in the town of Versailles, this 3d day of April, 1820.

J. DAVIDSON, *J. P.*

The deposition of James Hayden, of lawful age, taken at the court-house, in Frankfort, on the 31st day of March, 1820, agreeable to notice, to be read as evidence in a suit in chancery now depending in the circuit court of the United States for the seventh circuit, Kentucky district, wherein Andrew Kincannon is complainant, and Thomas D. Owings, Benjamin Head, Erasmus Jones, Robert Church, Thomas Church, William Church, Henderson Church, and others, are defendants, being first sworn, deposeth and saith: That the name of his father, subscribed to an original deposition now shewn to him in the clerk's office, (and a certified copy whereof is annexed to this deposition,) is his father's handwriting, with which he is acquainted, from having seen him frequently write his name, and that his father is now dead.

Question by the complainant. Were you in Kentucky in the year 1779, and how long did you remain in Kentucky?

Answer. In the month of September, in the year 1779, I came to Kentucky, and have been here ever since.

Question by same. Where did you reside from 1779 till 1784?

Answer. I lived in Lexington from the time I came to the country, 1779, until the year 1784 or 1785; I am not positive when I moved into the neighborhood of Frankfort.

Question by the same. Was B. Dandridge's military survey on Elkhorn talked of amongst those acquainted on main Elkhorn as early as April, 1780?

Answer. Yes.

Question by the same. Was the stream now called Elkhorn known and generally called by that name in 1776 and ever since?

Answer. I dont know what it was called as early as 1776, but know it was called Elkhorn in 1779 and ever since.

Question by the same. Were you acquainted with the military survey of Bart. Dandridge below the forks of Elkhorn? and at what time did you first become acquainted with it?

Answer. In the spring of the year, February, 1780, I was in company with Hancock Lee, Abraham Hoptonstall, George Carlisle, and my father, on our road from Lexington to Leestown, and they shewed me Andrew Lewis's name marked on a tree standing on the side of the buffalo road, and observed that was where Lewis's military survey crossed the road, and that B. Dandridge's military survey was the lowest down on Elkhorn.

Question by same. Was the body of that survey generally known as early as the month of April, 1780?

Answer. Yes.

Question by the same. From information of others, and conversation with the early settlers and locators, was Dandridge's military survey on Elkhorn generally known and talked of as early as April, 1780?

Answer. I have heard it frequently spoken of in the spring of the year 1780 by Hancock Lee, Abraham Hoptonstall, and others. And further this deponent saith not.

JAMES HAYDEN.

FRANKLIN COUNTY, sct.

The above deposition of James Hayden was sworn and subscribed to before me, a justice of the peace in and for Franklin county, at the courthouse, in Frankfort, this 31st day of March, 1820. Given under my hand, &c.

J. SWIGERT.

Between Andrew Kincannon, complainant, and Thomas D. Owings, and others, defendants. In chancery.

Interrogatories to be propounded on behalf of the complainant to the witnesses to be examined in the suit in chancery depending in the court of the United States for the seventh circuit and Kentucky district, wherein Andrew Kincannon is complainant, and Thomas D. Owings, and others, are defendants:

1st. Are you acquainted with the boundaries of Robert Sayers's survey of 2,000 acres on main Elkhorn, adjoining Dandridge's military survey?

2d. Did Rowland Burbridge, Robert Holloway, Archibald Clinton, Joseph Rutherford, Erasmus Jones, and Gabriel Poindexter, or each or any of them settle within the boundaries of said Sayers's survey? when did they settle there?

3d. Were they settled there by Thomas Quirk? how long did they live

there under said Quirk; were these settlements within Owings's survey; and how did Owings get the possession from these persons?

4th. What do you know of any possession held under said Sayers's survey; of the time it began, and the continuation thereof; and how it was changed, and when changed?

5th. Did Robert Church, now deceased, settle outside of his own patent, and outside of the interference between Sayers's survey and Church's survey, and outside of the interference between Sayers and Owings's survey?

6th. Did Robert Church, or any one holding under him, ever take possession of any land within the boundary of Owings's survey, and which interferes with said Church; or was that part of the land always in the possession of those claiming under Sayers or under Owings, and adverse to said Church's patent?

7th. Do you know any other matter or thing which will benefit the complainant; if so, state it?

BIBB, *for complainant.*

Thomas Cox being sworn, deposes and answers to the annexed interrogatories as follows, viz:

He answers and says, to interrogatory 1st, That he is acquainted with the boundaries of Robert Sayers's survey of 2,000 acres on main Elkhorn, adjoining Dandridge's military survey.

Answer to interrogatory 2d. That Rowland Burbridge and Robert Holloway settled in Sayers's survey about thirty-three years ago last April; they settled under Dickerson's claim, and were afterwards bought out by Downing, who had also purchased of Sayers. Archibald Clinton, Joseph Rutherford, Erasmus Jones, and Gabriel Poindexter, all settled within Sayers's survey; Clinton settled there about thirty years ago. They lived there say fifteen or twenty years. They settled under Thomas Quirk.

Answer to interrogatory 3d. That the settlements of Archibald Clinton, Joseph Rutherford, Erasmus Jones, and Gabriel Poindexter, were all within Owings's survey. Owings obtain possession of these persons by purchasing them out, as this deponent understood, and no suit for possession was ever brought.

Answer to interrogatory 4th. That this deponent purchased and settled under Sayers's survey. He first settled under Thomas Quirk about twenty-nine or thirty years ago, and about sixteen or seventeen years ago he purchased of Sayers, and still holds under that purchase.

Answer to interrogatory 5th. That Robert Church, now deceased, settled outside of his own patent, and outside of the interference between Sayers and Church's surveys, and likewise outside of the interference between Sayers and Owings's survey.

Answer to interrogatory 6th. That Robert Church, nor any person holding under him, never did take possession of any land within the boundary of Owings's survey which interferes with the said Church; that part of the land which interferes with Owings's in Church's survey, was held by persons under Owings and adverse to Church's patent.

Answer to interrogatory 7th. That he shewed to the surveyor, Willis Blanton, about two years ago, the place where Robert Church settled in the year 1789. He further states, that Thomas Quirk settled Kitty Cox, Nancy Lindsey, and Mrs. Welch, under Sayers's patent about thirty years ago, and that some time afterwards Gabriel Poindexter, Erasmus Jones, Joseph

Rutherford, and James Briscoe, who settled there under Sayers's patent, were compromised with by Thomas D. Owings. And further saith not.

his
THOMAS × COX.
mark

Seneca McCracken, upon oath, deposes and answers the annexed interrogatories as follows, viz:

Answer to interrogatory 1st. That he concurs with Thomas Cox in his statement in answer to this interrogatory; and also in his answers to the 2d, 3d, 4th, 5th, 6th, and 7th interrogatories, and deems it unnecessary to make separate and detailed statements to each, as it be a mere repetition of what he, the said Cox, has there stated.

SENECA McCRACKEN.

We, the undersigned, justices of the peace in and for Franklin county, do hereby certify, that the above depositions of Thomas Cox and Seneca McCracken were this day taken, subscribed, and sworn to, before us. Given under our hands, this 13th October, 1824.

O. G. WAGGENER, *J. P.*
JA. McBRAYER, *J. P.*

William Church, being sworn, deposes and says, in answer to the annexed interrogatories, as follows, viz:

Answer to interrogatory 1st. That he is not acquainted with the boundary of Robert Sayers's survey of 2,000 acres outside of Church's survey, but as far as it interferes with Church's I am acquainted with it.

Answer to interrogatory 2d. That he has a knowledge of Clinton's having settled within the boundary of Sayers's survey at an early date, but does not know the precise time, and he does not know under whom he settled there. He does not know about the settlements of the other individuals named in the interrogatory. Rutherford was settled some where about the line, and it is his impression it was inside of it.

Answer to interrogatory 3d. That James Briscoe settled within the survey of Sayers under Thomas Quirk; he thinks Briscoe did not settle there until about the year 1800. These settlements were all within Owings's survey, and Owings got possession of these persons by buying them out, except Briscoe, and he is not certain in what way he got possession of Briscoe.

Answer to interrogatory 4th. That he has stated above what he knows as to possession under Sayers's survey.

Answer to interrogatory 5th. That Robert Church first settled inside of his own patent, but, for the convenience of water, he afterwards built some three or four hundred yards from this settlement, and it was afterwards doubtful whether he was inside or outside of his patent; several surveys having been made, and all differing in the line; some leaving out the buildings and some taking them in: the plantation lays on both sides of line. The settlement was outside of the interference between Sayers's survey and Church's survey, and outside of the interference between Sayers's and Owings's survey.

Answer to interrogatory 6th. That Robert Church took possession of a small improvement inside of Owings's survey, but never put any person upon it, and some one under Owings afterwards took possession of it. Robert Church never afterwards had possession of any part of the land within Owings's survey, but had a settlement in Sayers's survey.

Answer to interrogatory 7th. That Robert Holloway and Rowland Burbridge were living within the boundary, since said to be Sayers's, in the year 1791; that Gabriel Poindexter, Erasmus Jones, and Archibald Clinton, all settled under Sayers's patent at an early date, and their settlements were got possession of by Thomas D. Owings by purchase, or at least suit was never brought for possession. And further this deponent saith not.

WILLIAM CHURCH.

We, the undersigned, justices of the peace in and for Franklin county, do hereby certify, that the above deposition of William Church was this day taken, subscribed, and sworn to before us. Given under our hands, this 16th day of October, 1824. O. G. WAGGENER, *J. P.*

ALEXANDER WILSON.

SURVEYOR'S REPORTS, to wit:

Notes of reference.

A. B. C. D., and binding on Elkhorn, and on part of Robert Sayers's original lines, Andrew Kincannon's part of said survey.

1, Benjamin Cox's house, part of his farm in Kincannon's survey.
2, William Cox's dwelling house, part of his farm in above survey.
3, John Oliver's dwelling house.
4, Erasmus Jones's dwelling house.
5, John L. Head's dwelling house.
6, Catharine Fitz's dwelling house.
7, Milton Stapp.
8, Jeremiah Green's and Charles Buck's farms.
9, William Branham's.
10, Ralph Phillips and James Blakey.
11, Bunnion McAndrew.
12, William and Allen Brashear.
13, John Leach.
14, Presley Neall.
15, William Blakey and Benjamin Luckett.
16, James Wilson.

Robert Church, Sen., deceased, heirs land interferes considerable with Sayers's, but they gave me no directions to lay down their claims, neither did any of the defendants.

The dotted lines, 2,000 acres, laid down in a square, making a straight line from each of Dandridge's corners the base, and extending at right angles $565\frac{7}{10}$ poles. For plat, see original.

UNITED STATES OF AMERICA, *seventh circuit, Kentucky district.—Andrew Kincannon, complainant, against Thomas D. Owings, Benjamin Head, Erasmus Jones, Robert Church, Thomas Church, William Church, Henderson Church, Milton Stapp, William Brashear, Catharine Fitz, Allen Brashear, John Leach, Presley Neall, Charles Buck, Bunnion McAndrews, Jeremiah Green, William Blakey, Benjamin Luckett, James Blakey, Ralph Phillips, John Head, James Wilson, John Oliver, Benjamin Cox, William Cox, James Briscoe, and Alexander Macey, defendants. In chancery.*

Agreeably to a notice in the above case, I met the parties at the upper corner of Sayers's survey on main Elkhorn, on the 9th of November, 1819, in company with Charles Buck, Presley Neall, James Briscoe, &c. We be-

gun at a Spanish oak, elm, and lynn, all standing on the north bank of main Elkhorn, plainly and anciently marked as a corner, shewn me on a former occasion by Peter G. Voorhies as Sayers's upper corner; thence S. 74° E., with a plain and ancient marked line 510 poles, crossing the north fork of Elkhorn, in all 688 poles, to an ash and buckeye in a cleared piece of ground, plainly marked as a corner; those called for in the patent not found; thence N. 16° E., crossing the north fork of Elkhorn at 72 poles, crossing also a large drain at 240 poles, and a small branch at 538 poles, in all 591 poles, to a fallen down honey locust, plainly and anciently marked as a corner, a double white oak stump chopped down, shewn me by William Letcher as Sayers's original corner; (on this we ran with a plain and ancient marked line;) thence N. 74° W., with a plain and ancient marked line 674 poles, to a walnut and buckeye, standing on the bank of main Elkhorn, plainly and anciently marked as a corner, which was shewn me on a former occasion by Peter G. Voorhies as the lower corner of Sayers's survey; thence S. 35° W., crossing main Elkhorn 22 poles and 19 links to a sugar tree, plainly marked as a corner and a planted stone, which corner was shewn me on a former occasion by William Steele; I then ran up the creek with its meanders, passing the mouth of a creek at 350 poles by the meanders, and another at 504 poles, in all by the meanders 969½ poles, to the beginning corner of Bartholomew Dandridge's 2,000 acre survey, now a planted stone, the three double sugar trees called for being down; the place where it stood was shewn me on a former occasion by Jacob Sodowsky and William Steele on the south bank of main Elkhorn by a large buffalo ford, which they also shewed me; on a straight from the lower to the upper corner of Dandridge's military survey is 542 poles. I was then directed by the complainant's attorney to lay down Andrew Kincannon's survey from deed calls, which I did by actual survey on the ground, beginning at Sayers's lower corner on main Elkhorn, a walnut and buckeye, and with his original line S. 74° E., 305 poles, to a buckeye on said line standing, plainly and anciently marked as a corner, near Cox's old cabin, said corner and cabin shewn me by Benjamin Cox; thence S. 35° W., 271 poles, with a plain and ancient marked line to a fallen down elm and mulberry stump, shewn me by Erasmus Jones as the original corner of Kincannon; thence S. 72° E., 260 poles, with a plain and ancient marked line, corner called for could not be found, shewn me by Robert Braden, where he says they formerly stood; thence S. 18° W., with a plain and ancient marked line 204 poles, crossing the north fork of Elkhorn; course continued, in all 314 poles, to two poplar stumps on Sayers's original line, and with the same N. 74° W., 483 poles, to his upper corner on main Elkhorn, and down the same with its meanders to the beginning. I was also directed by complainant's attorney to lay down Dandridge's survey from actual survey, beginning on the south bank of main Elkhorn, a planted stone shewn to me as above stated; thence S. 45° W., 484 poles, to two poplars standing at the foot of a hill, in a flat piece of ground and near a draft, both standing, plainly and anciently marked as a corner, shewn to me by Jacob Sodowsky and William Steele as the second original corner of Dandridge's survey; thence N. 70° 30″ W., 364 poles, to a walnut, standing, plainly and anciently marked, a fallen down white oak and hickory, which appears to have been regularly and anciently marked as a corner, which was shewn me by William Steele as the third corner of said survey; thence N. 6° 40″ W., 196 poles, to an ash, locust, and elm, all standing, plainly and an-

ciently marked as a corner, shewn me by William Steele as the fourth corner to said thence N. 45° W., 208 poles, to a poplar and oak, both standing, plainly and anciently marked as a corner, the walnut called for down and much decayed; this corner was shewn me by William Steele as Dandridge's fifth corner; thence N. 45° E., crossing a branch at 38 poles, in all 178 poles, to an ash, sugar tree, and dogwood, marked as a corner, an oak stump in a state of decay, shewn me as the sixth original corner of said survey by William Steele, he stating to have seen it in '94, at which date he marked the ash, dogwood, and sugar tree; thence S. 67° E., 69 poles, to a white oak, standing, plainly and anciently marked as acorner, a dead walnut near it nearly destroyed by fire; John Bartlett stated he caused the hoopwood to be chopped down in opening a road, it having been plainly and anciently marked as a corner; this corner was shewn by William Steele as the seventh corner of said survey; thence N. 47° E., 141 poles, to the foot of a hill, William Steele shewed me a white oak much decayed as the original and eighth corner of said survey; thence with the foot of the hill N. 40° W., 67 poles, no corner found, William Steele shewed me where it formerly stood; N. 11° W., 47 poles, in a cleared piece of ground, no corner found, the place shewed me by William Steele where it formerly stood; N. 15° 30" E., 47 poles, no corner found, William Steele shewed me the place where it formerly stood; N. 35° E., 28 poles, no corner found, the place designated by William Steele where the original corner stood; N. 63° E., 138 poles, no corner found, the place where it formerly stood was pointed out by William Steele. (Note.—Since we ran the line to the foot of the hill we have been in cleared land.) Thence N. 84° 15" E., 87 poles, to a honey locust and sugar tree at the foot of a hill, also a hickory marked, but appears to be of recent date than the other two, and appears to have been marked with a large instrument, this corner shewn by William Steele as being one of the original corners of Dandridge; thence S. 82° E., 520 poles, crossing the ridge to a sugar tree, plainly and anciently marked as a corner, on the bank of main Elkhorn, by a small gully at the lower end of an island, and opposite a high hill, this corner was shewn me by William Steele as Dandridge's original corner.

WILLIS BLANTON, *S. F. C.*

ISAAC WINGATE, } *S. C. C.*
FRANCIS SMITH, }

22d April, 1822.

For plat, see original.

1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1., Barth. Dandridge's 2,000 acres.

1. 1. B. B., Robert Sayers's 2,000 acres.

A. A. A. A. A., high hills, with cedars and other growths.

C. C. C. C. C. C. C. C.; gullies or drains making into main Elkhorn.

2. 2. 2. 2. 2. 2., buffalo fords crossing main Elkhorn.

3s represent 11 islands in main Elkhorn.

K. K. K. K. K., Robert Church's 2,497 acre tract.

L. L. L. L., Thomas D. Owings's claim, 1,000 acres.

△ a., represents the late residence of Robert Church, Sen., deceased, now occupied by William Church.

△ b., represents Robert Church, jr's., settlement.

I agree that this plat shall be received as evidence in the suit of Kincannon vs. Owings, &c., in the court of the United States, seventh circuit, Kentucky district, in chancery.

GEO. M. BIBB, *attorney for compl't.*

UNITED STATES OF AMERICA, *seventh circuit, Kentucky district, sct.— Andrew Kincannon, complainant, against Thomas D. Owings, Benjamin Head, Erasmus Jones, Robert Church, Thomas Church, William Church, Henderson Church, Milton Stapp, William Brashear, Catharine Fitz, Allen Brashear, John Leach, Presley Neall, Charles Buck, Bunnion McAndrews, Jeremiah Green, William Blakey, Benjamin Luckett, James Blakey, Ralph Phillips, John Head, James Wilson, John Oliver, Benjamin Cox, William Cox, James Briscoe, and Alexander Macey, defendants. Interlocutory decree.*

A. B. C. D. E.. and lines thus —"—"—", Robert Church's 2,497 acre survey, laid down by actual survey on the ground by his patent calls.

5. 5. 5. 5., and black rules, ruled lines, binding on Elkhorn, Adam Stephens's 2,000 acres military.

5. 5. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6. 6., and black ruled lines, and binding on Elkhorn, Bartholomew Dandridge's military survey of 2,000 acres, laid down by actual survey on the ground.

8. 2. 2. 2. 2. 8., with lines thus o. o. o. o., and binding partly on Sayers's patent lines and Elkhorn, shews the land deeded by Sayers to Andrew Kincannon, laid down by actual survey on the ground.

8. 8. 8. 8., with red ruled lines, and binding on Elkhorn, Sayers's original 2,000 acres as patented, laid down by actual survey.

7. 7. 7. 7., with black dotted lines, Sayers's 2,000 acres, laid down agreeably to the above decree, in a square, taking the general course of the creek for its base, and running off at right angles for quantity.

1. 1. 1. 1., with red dotted lines, shews Thomas D. Owing's 1,000 acres as patented.

The interference between Church's survey and Kincannon is bounded as followeth, to wit: Beginning at 8, at a Spanish oak, elm, and lynn, on the bank of main Elkhorn, upper corner to Sayers's survey as patented, and with a line of the same S. 74° E., 450 poles, to a stake and white oak stump in Benjamin Luckett's farm, on Robert Church's original line at 9, and with the same N. 2° W., 380 poles, to two honey locust trees, original corner to said Church's survey; thence with another of Church's original lines N. 20° 47" W., 220 poles, to a stake near a plumb bush in Benjamin Head's field, on Kincannon's original line at 11, and with the same N. 74° W., 160 poles, to a walnut and buckeye on the bank of main Elkhorn at 8, original corner to Sayers's; thence up Elkhorn and with its meanders to the beginning, containing 752 acres, 1 rod, 20 perches.

Said Kincannon's survey interferes with Thomas D. Owings's 1,000 acres as followeth, viz: Beginning at ⊙ on Sayers's original line at a white oak and dogwood; thence with Owings's original line N. 2° W., 200 poles, to Owings's original corner, a black ash, sugar tree, and hickory stump at P; and with another of his original lines N. 88° W., 410 poles, to a sugar tree and white oak on Kincannon's line, at T; and with said Kincannon's line S. 72° E., 60 poles, to his original corner, now down, marked in its place a hackberry and pawpaw at 2; and with Kincannon's line S. 18° W., 204 poles, crossing the north fork of Elkhorn; in all 314 poles to 2, two poplar stumps on the bank of the north fork of Elkhorn, original corner to An-

* For plat see original.

drew Kincannon on Sayers's patent line, and with the same to the beginning, containing 625 acres. WILLIS BLANTON, *S. F. C.*

THOMAS SMITH, } *S. C. C.*
ROBERT BRATTON, }

Surveyed 25th March, 1822.

UNITED STATES OF AMERICA, *seventh circuit, district of Kentucky, sct. Andrew Kincannon, complainant, against Thomas D. Owings, Milton Stapp, John L. Head, Charles Buck, Benjamin Luckett, James M. Blakey, Ralph Phillips, John Oliver, jr., James Briscoe, Presley Neall, and Benjamin Head, defendants. In chancery.*

Agreeably to a notice herewith filed, I met on the land in controversy on the 25th day of November, 1822, and surveyed for complainant as follows:

A. B. C. D. E., with black ruled lines, Robert Church's 2,497 acres, laid down by actual survey on the ground from a copy of his original survey.

T. T. T. T., with red dotted lines, Thomas D. Owings's 1,000 acres as surveyed.

O. P. Q. R., Sayers's 2,000 acres as surveyed.

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14., Bartholomew Dandridge's 2,000 acres military survey as surveyed.

1. 2. 15. 16., Adam Stephens's 2,000 acre military survey.

17△, House shewn me by Henderson Church, Seneca McCracken, and Thomas Cox, as the first cabin built by Robert Church, which is on the farm now occupied by William Church, and is 24 poles at angles outside of his east and closing line; main Elkhorn laid down by actual survey, also Church's, Owings's, Sayers's, &c., as above connected. *

WILLIS BLANTON, *S. F. C.*

2d December, 1822.

Order granting appeal, to wit: Appeal in the above case allowed.

JOHN McLEAN,
Justice Supreme Court U. S.

15th May, 1830.

APPEAL BOND, to wit:

Know all men by these presents, that we, Lewis W. R. Phillips, Sally Head, Nancy Head, and are held and firmly bound unto Andrew Kincannon in the sum of five hundred dollars, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents, and sealed with our seals, and dated this 15th day of May, 1830.

The condition of the above obligation is such, that whereas the above bound Lewis W. R. Phillips, Sally Head, and Nancy Head, have prayed for and obtained an appeal from the seventh circuit court of the United States in and for the Kentucky district, to the Supreme Court of the United States, in a certain suit in chancery wherein said Andrew Kincannon was complainant, and Thomas D. Owings, Ralph Phillips, the ancestor of said L. W. R. Phillips, and John L. Head, the husband of said Sally Head, and ancestor of said Nancy Head, were defendants.

Now, if the said Lewis W. R. Phillips, Sally Head, and Nancy Head, shall well and truly prosecute the said appeal with effect, or on failure there-

* For plat, see original.